

ELBERT F. THOMAS, PETITIONER,

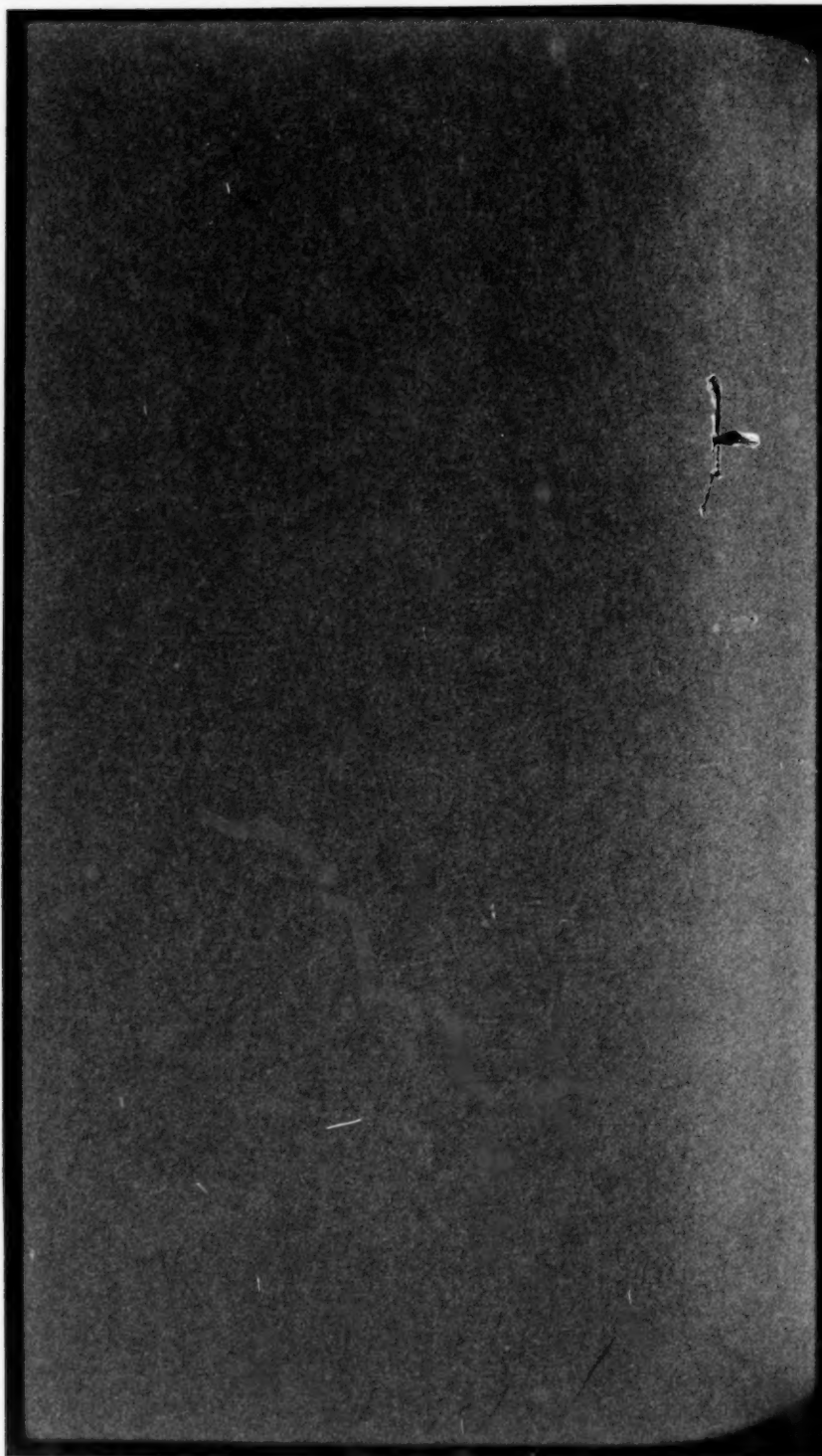
UNITED STATES OF AMERICA.

IN WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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No. 13281

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**United States  
Court of Appeals**  
for the Ninth Circuit.

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ELMER F. REMMER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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**Transcript of Record**  
In Nine Volumes  
Volume V  
(Pages 1849 to 2300)

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**Appeal from the United States District Court  
for the District of Nevada.**

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Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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(Testimony of Harold H. Maundrell.)

Redirect Examination

By Mr. Campbell:

Q. Mr. Maundrell, I am going to refer to defendant's Exhibit [1415] A-1, the purported promissory note dated September 27, 1946, in amount of 50 thousand dollars to Robert L. Jeffres and signed Elmer F. Remmer, concerning which you testified on cross-examination. Now, Mr. Maundrell, did you type up this note on the date that it bears, September 27, 1946? A. Yes, sir.

Q. There is no doubt in your mind as to that?

A. No, sir.

Q. Now do you recall what time of day these various matters took place?

A. It was in the afternoon, early afternoon.

Q. Do you recall approximately what time?

A. It might have been around noon or around one o'clock.

Q. Had you known Mr. Jeffres prior to that time? A. Yes, sir.

Q. How long a time had you known him?

A. About five years, I believe.

Q. And where had you known him?

A. I met him for the first time at Cal-Neva Lodge.

Q. Was he associated or connected with Cal-Neva Lodge? A. An office manager there.

Q. And was he office manager there at all times that you were employed there? A. No, sir.

Q. Over what period of time was he office manager, do you know? [1416]

(Testimony of Harold H. Maundrell.)

A. I think he was there two years while I was there.

Q. Do you know on September 27, 1946, what his occupation was?

A. I believe he owned the Tuxedo Bar.

Q. Is that a bar located in what is known as the Ambassador Hotel in San Francisco?

A. Yes, sir.

Q. Do you know the nature of his interest, whether employed or partnership?

A. No, I don't know. It was a partnership, I believe.

Q. Do you know how long he had been in there?

A. No, sir.

Q. Do you know who supplied him with the money with which to purchase the partnership in that bar?

A. No, sir.

Q. On this occasion of September 27, 1946, I believe you stated that Mr. Jeffres, Robert L. Jeffres, came into the office carrying a bundle wrapped in a newspaper?

A. Yes, sir.

Q. Did you at any time see what was contained in that bundle?

A. Yes, sir.

Q. When was that?

A. That same day in Mr. Remmer's office.

Q. And was that during the time that Mr. Jeffries, Mr. Remmer and yourself were present?

A. Yes, sir. [1417]

Q. Was the bundle opened in your presence at that time?

(Testimony of Harold H. Maundrell.)

A. No, it had been opened and there was money on Mr. Remmer's desk.

Q. Did you count the money? A. No, sir.

Q. Do you know how much money was there?

A. No, sir.

Q. Did you observe the denominations of the bills? A. No, I did not.

Q. Did you see the money after that occasion?

A. No, sir.

Q. Did you, yourself, have anything to do with the handling of the money? A. No, sir.

Q. Did you make any entries in your books with regard to that money? A. No, sir.

Q. Do you know the source of that money, other than the fact that you saw Mr. Jeffers come there with a package on that day? A. No, sir.

Q. Do you know, of your own knowledge, whether or not Mr. Jeffers was the owner of that money? A. No, sir.

Q. I believe you stated that you yourself typed up this note, defendant's A-1, is that [1418] correct? A. Yes, sir.

Q. Was this note signed in your presence?

A. Yes, sir.

Q. What was done with the note?

Q. Gave it to Mr. Jeffers.

Q. Did you see him again on that day?

A. After this period?

Q. After it was given to Mr. Jeffers?

A. No, sir.

Q. When was the next time you saw the note?

(Testimony of Harold H. Maundrell.)

A. When it was presented to me today in court.

Q. In the meanwhile, I will ask you whether or not you had seen a photostatic copy of the note?

A. Yes, sir.

Q. And when did you see that?

A. During this last week.

Q. Do you recall when?

A. It might have been last Tuesday or Wednesday—not Tuesday—it might have been before Christmas.

Q. And where did you see that?

A. I think it was Mr. Avakian showed it to me.

Q. Was that the first time you had seen the note, or photostatic copy of it, since the date of September 27, 1946?

A. Yes, sir.

Q. During the last week did you see the photostatic copy on [1419] more than one occasion?

A. No, just the once, I believe.

Q. Where was it shown to you?

A. I think I saw it in Mr.—I am not sure whether in Mr. Avakian's room—I believe it was—at the hotel.

Q. Now were you ever present at any time when this money was wrapped?

A. No, sir.

Q. Do you know when the money was wrapped, if it was?

A. No, sir.

Q. Do you know whether or not it was wrapped that same day?

A. No, sir.

Q. You have no knowledge on that subject?

A. No knowledge at all.

Q. Do you have any knowledge to what purpose

(Testimony of Harold H. Maundrell.)

the money was placed, if it was placed to any purpose, by Mr. Remmer?

A. I have no knowledge at all.

Q. During the period of your employment, either at Cal-Neva or with the Menlo Club, did you see Mr. Jeffers on many occasions? A. Yes, sir.

Q. And how often would you see him?

A. Well, I might see him two or three times a week.

Q. During the entire period?

A. Well, the time of my employment at Cal-Neva Lodge, while [1420] he was there, I saw him every day.

Q. I mean subsequently, when you became associated with the Menlo Club? A. No.

Q. How often; did you see him often?

A. Oh, maybe several times a week, he would drop in to 110 Eddy..

Q. On the occasions when you saw him, will you state whether or not he was in company with Mr. Remmer?

A. No, sir. I have seen him in company with Mr. Remmer, but not every time I would meet him.

Q. Do you recall how large this package was that you saw in Mr. Jeffers' possession?

A. Well, a fairly large size package, I can't say at this time.

Q. Well, your best recollection as to the size?

A. Well, I imagine it was about, it might have been four or five inches thick, I don't remember.

Q. I don't know whether I asked you or not, did you observe the denomination of bills?



(Testimony of Harold H. Maundrell.)

Mr. Gillen: You did ask him and he said he didn't.

A. I didn't.

Q. Now I believe you stated to Mr. Gillen that this note is drawn up on stationery which you had printed; is that correct? A. Yes, sir.

Q. Where did you have that stationery printed?

A. I don't remember at this time. [1421]

Q. Do you recall when you had it printed?

A. Yes, on or about maybe September or October of 1945.

Q. 1945? A. Yes, sir.

Q. Isn't it a fact that you had more than one order of this stationery printed?

Mr. Gillen: Of course, may it please the Court, I am going to object to the form of the last question. It is a cross-examination question and not redirect—isn't it a fact—he is cross-examining his own witness throughout this redirect examination.

The Court: Try to avoid leading as much as you can.

Mr. Campbell: Yes, your Honor.

Q. Did you have more than one order of this stationery printed up?

A. I may have, I don't remember at this time.

Q. I ask you did you have an order of this stationery, that is, bearing the heading, "Property Management," printed up subsequent to September 27, 1946? A. Yes, sir.

Q. Do you recall when you had that printed up?

A. No, sir.

(Testimony of Harold H. Maundrell.)

Q. Is the name Lauber Printing Company familiar to you?      A. I don't remember at this time.

Q. Now directing your attention to government's Exhibit 125, [1422] the ledger of the Menlo Club, 1947, Mr. Gillen asked you to turn to certain accounts which he denominated "Capital Accounts," do you recall that?      A. Yes, sir.

Q. And will you turn to the same accounts. Are you referring to the accounts which have been marked plaintiff's 125A and 125B?

A. Yes, sir.

Q. Are you referring to any additional accounts there?      A. Yes, sir.

Q. To what additional accounts are you referring?

A. Well, there are three pages in this book.

Q. Which are headed in what manner? What is the top heading?      A. Partner's Account.

Q. And those were also accounts to which you referred when Mr. Gillen was asking you as to what was shown by the capital account of the various partners?

Mr. Gillen: Objected to as assuming something not in evidence. I did not ask him about any other accounts but just an example of one account.

The Court: Let us get the question.

(Question read.)

Mr. Gillen: The only account we referred to was Mr. Maundrell's account and Mr. Nelson's account, to merely get [1423] examples of how the accounts were carried through.

(Testimony of Harold H. Maundrell.)

The Court: I take it that the accounts which he is now examining would be one or the other of these two.

Mr. Campbell: I will reframe the question.

Q. When Mr. Gillen was asking you in regard to Mr. Nelson's capital account, are those the pages to which you referred? A. Yes, sir.

Q. Now, Mr. Gillen directed your attention on Exhibit 91 to Schedule I of the partner's shares of income and credit, calling your attention, I believe under that schedule to Oscar F. Nelson, 15 per cent, \$8,238.06, is that correct? A. Yes, sir.

Q. And you stated, I believe, that that was shown on this capital account in the book?

Mr. Avakian: What is that exhibit?

Mr. Campbell: Amended 1946 return of the Menlo Club.

Mr. Avakian: I think the record will show that we asked about Exhibit 90.

Mr. Campbell: Very well.

Q. I will show you Exhibit 90, which is the original 1946 return, and your attention was directed under Schedule I to Oscar F. Nelson, 15 per cent, \$12,524.49? A. Yes, sir.

Q. And you stated, I believe, that that same amount was shown in Mr. Nelson's capital account as being his distributive share? [1424]

A. Yes, sir.

Q. Now let me also call your attention to that exhibit to the balance sheet, Schedule H under the heading "Partners' Capital Accounts, Oscar F. Nel-

(Testimony of Harold H. Maundrell.)

son," under the small letter "c" beginning of taxable year, \$1580, end of taxable year, \$2340. You observe those figures?      A. Yes, sir.

Q. Now will you show me where in the books such a capital account is set up reflecting that as being the capital investment by Mr. Nelson as of the beginning and end of the taxable year 1946, in the Menlo Club?

A. That was handled by Mr. Ayton. He would have that in his work sheets.

Q. Do you have anything in your records relative to that?      A. No, sir.

Q. Now, Mr. Maundrell, with reference to these accounts which are before you, are they in fact capital accounts or drawing accounts?

Mr. Gillen: I submit the records speak for themselves. The exhibit was introduced by the government. This is calling for an interpretation.

The Court: Objection will be overruled. You may answer the question.

A. Capital accounts.

Q. Well then can you state—you stated, I believe that you [1425] supplied the information that went into the making of plaintiff's Exhibit 90—how the capital account of Oscar F. Nelson figure of \$2340, was arrived at?

A. That I don't know. That was done by Mr. Ayton, the auditor.

Q. And is there anything in your records which you maintained which would reflect this figure?

A. No, sir.

(Testimony of Harold H. Maundrell.)

Q. Now directing your attention again to plaintiff's Exhibit 90, and to the capital account of the partners, I direct your attention that in the balance sheet for partner's capital accounts at the beginning of the year there is listed Masse Ditto, \$1580, but no amount at the end of the year and for Wm. C. Fricker at the beginning of the year \$1580, but no amount at the end of the year. Do you have anything in your records there that would indicate the manner of the disposal or writing off of the capital account of those two individuals during 1946?

Mr. Gillen: Objected to as improper redirect examination. It is immaterial so far as the evidence going in but counsel is reviving his direct examination. Nothing was asked in cross-examination about any partner's accounts except Mr. Maundrell's own account and Mr. Nelson's, merely to demonstrate how the accounts were carried over and the same figures reflected in income tax returns. It is improper redirect and we object on this ground.

The Court: It seems to me it is. [1426]

Mr. Campbell: I might state this, your Honor, I disagree with counsel. The matter of the capital accounts and the manner of their keeping and withdrawals was gone into by Mr. Gillen on cross-examination. It is true that he used two of them as illustrative, as he said. Then he went on and asked this witness if it was not a fact that he, this witness, supplied to Mr. Ayton all of the figures which were used to make up the returns and that subsequently Mr. Ayton would return these partnership returns

(Testimony of Harold H. Maundrell.)

to him, so that he could secure the signature. Now I think on the basis of that, we are entitled to show that the figures set forth on the returns in certain respects are not reflected in the books. I think the subject was opened up to the extent that we were permitted to do so, and if the Court feels that this is not proper redirect examination, I will ask permission, for this purpose, of reopening the direct examination.

The Court: You may ask those questions on direct.

Mr. Gillen: May I offer this objection. Counsel refers to accounts as purported accounts. These exhibits are exhibits that the prosecution put in as their own exhibits and they relied on them and they are bound by them.

The Court: Well, the word "purported" will be stricken.

Mr. Campbell: I object to counsel's statement.

The Court: The jury have been instructed three or four times, and I will do it again, get back to the [1427] fundamental things. You will decide this case only upon the evidence that you hear from this witness stand, the testimony of the witnesses and the exhibits, and remarks of the Court, remarks of counsel, arguments of counsel, are not evidence, any exchanges between the different counsel and the Court and counsel are not to be regarded by you or to influence you in any respect. Just remember you are to decide the case entirely upon the evidence.

Mr. Gillen: May I say this, your Honor, I do not

(Testimony of Harold H. Maundrell.)

know what counsel had to complain about. I merely gave the reason for my objection and the Court ruled upon it.

The Court: Well, I think we will have no trouble about that.

Mr. Gillen: Now we understand Mr. Campbell is being permitted to reopen his direct examination?

The Court: Yes.

Mr. Campbell: I will indicate when I am going back to redirect. This is a direct examination question.

(Last question read.)

A. No, I do not.

Q. Do you know how that figure was arrived at?

A. No, sir.

Q. After the year 1945 were either Mr. Ditto or Mr. Fricker connected with the operation of the Club? [1428]

A. No, sir.

Q. Now there is shown, is there not, on the books of account that you have there, a credit to their accounts for profits in 1945?

A. Yes, sir.

Q. And were those profits, to your knowledge, ever paid to them?

A. Not to them.

Q. Had they been paid to them up to the time you terminated your employment?

A. Not to my knowledge.

Mr. Campbell: Now I will resume redirect examination.

Q. Now with regard to Oscar Nelson, Mr. Gillen asked you to read certain entries made in his ac-



(Testimony of Harold H. Maundrell.)

count, where various sums were drawn payable to the Collector of Internal Revenue and to the State franchise tax commission, and in addition certain sums of two thousand dollars which were shown as withdrawn by Oscar Nelson, do you recall that?

A. Yes, sir.

Q. You have that sheet before you?

A. Yes, sir.

Q. Now with relation to the amounts paid to the Collector of Internal Revenue and State Franchise Commission, were they withdrawn in cash or by check? A. Most of those were by check.

Q. And to whom were the checks payable in case of amounts withdrawn [1429] for the purpose of the Collector of Internal Revenue and State Franchise Tax Commission?

A. I believe they were drawn directly to the Collector of Internal Revenue.

Q. And to the State Franchise Tax Commission?

A. I believe so.

Q. Well, do you recall upon what account those were drawn?

A. Yes, sir, on the Crocker National Bank, I believe.

Q. That would be the account that you maintained, is that correct? A. Yes, sir.

Q. Now what is the first check number of checks so drawn? A. 1946, June 13th.

Q. No, the check number, does it show there?

A. Check No. 108.

Q. And the date again? A. June 13th.

(Testimony of Harold H. Maundrell.)

Q. 1946? A. Yes, sir.

Q. I have here the check stubs for the period June 11, 1946, to September 28, 1946, do you find the stub there or do you have additional check books which were used simultaneously?

A. It must have been in another check book.

Q. Do you recall whether these check books which have been shown to you were all the check books which you had? You do not [1430] find the stub there? A. No, sir.

Q. It is, however, I take it, your recollection that that was drawn directly to the collector?

A. I believe it was.

Q. What is the next check drawn to the collector for which you show a number?

A. August 8, 3358.

Q. That was of what date?

A. August 8th.

Q. Of what year? A. 1947.

Q. That period is beyond the period for which we have the check stub. Now in regard to the several withdrawals of two thousand dollars, what do the books indicate as to the manner in which that was paid to Mr. Nelson?

A. It was drawn cash.

Q. Now will you examine the records and state whether or not, from any cash fund there was shown a corresponding charge for the withdrawal of two thousand dollars?

A. No, I have no account of that.

(Testimony of Harold H. Maundrell.)

Q. What was the source of the money, the two thousand dollars? What paid it?

A. It was taken out of the Menlo Club receipts.

Q. Well now what counter-entry was made with respect to paying [1431] him the two thousand dollars?

Q. I do not believe there was any outside the fact it was entered on this book against his account as having withdrawn from those receipts.

Q. Was there any record made of depletion of the cash fund by two thousand dollars?

A. That I do not know.

Q. Did you know at that time, or at any time, how much was in the cash fund?

A. No, sir.

Q. You had no record of that?

A. No, sir.

Q. Do you know whether or not Mr. Nelson delivered these sums of two thousand dollars to Mr. Remmer?

Mr. Gillen: We offer the objection, may it please the Court, that it is leading and suggestive. It is improper redirect examination and I assign it as misconduct to ask such question.

Mr. Campbell: Well, I will withdraw the question.

Mr. Gillen: It is purely to prejudice the minds of the jury and throw some suspicious suggestions in their mind.

The Court: Counsel has withdrawn the question.

Q. Do you know what use Mr. Nelson made of that money?

A. No, sir.

(Testimony of Harold H. Maundrell.)

Q. In regard to the amounts charged against Mr. Nelson's account, [1432] did you yourself pay him that money? A. No, sir.

Q. What was the source of the information which you placed in your records there?

A. Given to me by Mr. Remmer and Mr. Nelson both.

Q. Now you were asked on cross-examination relative to making of certain tax returns in the name of William Remmer, a nephew, and I think you were shown certain partnership returns of the Menlo Club and you stated that you did not make any income tax returns for that name. Did you make any income tax return in the name of William Remmer?

A. Federal old-age pension returns, I believe.

Q. And to what agencies were those returns made?

A. The federal government and also to the state.

Q. And in what name were they made?

A. I am under the impression it was under William Remmer, doing business as——

Mr. Gillen: I do not think this is proper re-direct. We are not interested in Mr. William Remmer, the nephew's personal returns. All I did in that connection, your Honor, was to correct the impression Mr. Maundrell had that the returns were made in the name of William Remmer doing business as the Menlo Club. I showed him prosecution's exhibits, asking him if it corrected the impression

(Testimony of Harold H. Maundrell.)

in his mind. He was mistaken. It has no part in the issue of this case. [1433]

Mr. Campbell: I think the matter will be straightened out. I will ask to have marked for identification file of what purports to be copies of social security and old-age pension returns and I will ask that this file be given a number for identification.

The Clerk: No. 142.

Mr. Gillen: May it please the Court, we have no objection to the contents of these as evidence, but do offer the objection, first of all it is improper re-direct examination; secondly, it is incompetent, irrelevant and immaterial, which does not touch the issues of income tax here. We think it is cluttering up the record with immaterial data. If your Honor will look at it, you will agree with us.

Mr. Campbell: I didn't intend to offer it into evidence but to refresh the witness' recollection.

The Court: There was a question before the Court on which objection was made a little while ago. It seems to me you are going beyond the scope of cross-examination.

Mr. Campbell: No, on direct examination this witness testified that he, in the course of his duties, prepared certain tax returns in relation to the Menlo Club under the name of William Remmer, the nephew, and testified further that William Remmer had nothing to do with the operation of the business. On cross-examination counsel brought out that that did not apply [1434] to the income tax

(Testimony of Harold H. Maundrell.)

returns and left the matter there, with apparently the inference, and asked the witness if he had not been mistaken in his testimony as to preparing the tax returns. Now I intend to refresh the witness' recollection.

The Court: You may proceed. Objection will be overruled.

Q. Refreshing your recollection, if it does, I show you plaintiff's Exhibit 142 for identification and ask you to examine it and then state whether or not it refreshes your recollection as to whether or not you prepared certain tax returns for the Menlo Club in the name of William Remmer and if so, the type of return which was prepared under that name?

Mr. Gillen: Now, may it please the Court, that does not help the situation at all. Mr. Maundrell testified that the income tax returns, federal income tax returns he recollected were made out William Remmer doing business as the Menlo Club. I showed him those income tax returns on cross-examination, which were prosecution's exhibits, and which showed that they were not such and I merely corrected that mis-impression he had. He admitted he was mistaken about that. This is something else. This has to do with social security and other things. We do not think it is material. It isn't doing anything to the case we have here except cluttering up the record.

The Court: He may answer the question.

A. May I have the question?

(Testimony of Harold H. Maundrell.)

(Question read.) [1435]

A. Yes, sir.

Q. Will you state the type of returns which was prepared under the name of William Remmer, doing business as the Menlo Club?

Mr. Gillen: Objected to as incompetent, irrelevant and immaterial, also assuming something not in evidence.

The Court: He may answer the question.

A. Employers tax return for the federal government and for the State of California and contribution return, which is known as unemployment insurance.

Q. Under what name were they prepared by you?

A. William Remmer, doing business as Tiny's Waffle Shop, Menlo Bar and Menlo Club.

Q. And were those prepared by you in the course of the performance of the duties which you have described?

A. Yes, sir.

Q. I am going to direct your attention to government's Exhibit 90—I think you have that before you, have you not?—income tax, partnership return of income of the Menlo Club for 1946—and directing your attention to the schedule set up for the Tiny's Restaurant and bar and for the Menlo Club, and calling your attention to the expense item of the social security tax, amount \$980.16, and unemployment tax employer, \$2,646.50, on this return and ask you whether or not the employers and con-



(Testimony of Harold H. Maundrell.)

tribution and social security tax, as set up in the returns prepared by you under the name of William Remmer, doing business [1436] as 'Tiny's Waffle Shop, Menlo Bar and Menlo Club, were taken as deductions upon the partnership return of the Menlo Club?

Mr. Gillen: We will stipulate that it was.

Mr. Campbell: Very well, so stipulated.

Q. Now, Mr. Maundrell, you stated on cross-examination that before you began your active employment with the Menlo Club they had a bank account; do you recall that? A. Yes, sir.

Q. Where was that bank account located?

A. Bank of America.

Q. At what branch?

A. Day and Night Branch.

Q. In whose name was that account?

A. I think in the name of Muriel Bourque.

Q. Who was Muriel Bourque?

A. She was a secretary.

Q. For whom?

A. Well, secretary for the Menlo Bar and the Menlo Club and Tiny's Waffle Shop.

Q. Now at the time you commenced that employment, were you given any records in regard to that bank account? A. Yes, sir.

Q. Do you know where those records are?

Mr. Gillen: I don't think this is proper redirect unless counsel is going to ask the Court to permit him to go onto [1437] direct again. We asked nothing about any early bank accounts.

(Testimony of Harold H. Maundrell.)

The Court: I don't recall.

Mr. Campbell: Yes, counsel asked the specific question whether or not there was any specific bank account when he commenced.

Mr. Gillen: No, I challenge counsel to find any reference to any bank account other than the Crocker Bank.

Mr. Campbell: May I ask the witness his recollection?

The Court: No, we will have the record searched.

Mr. Campbell: Very well.

The Court: Is it at the beginning of cross-examination or when?

Mr. Campbell: According to my notes, it will be close to the beginning of the cross-examination, and I will examine it during the recess. Now may I have defendant's Exhibit "X"?

Q. Showing you defendant's Exhibit "X," which is carbon copy of letter dated March 12, 1947, addressed to Pat Mooney, 800 South Center Street, Reno, I believe you testified, in response to Mr. Gillen's question, that you dictated that letter, signed the original and mailed it to Mr. Mooney at that address; is that correct? A. Yes, sir.

Q. Do you know what that address is on there?

Mr. Gillen: I submit the letter speaks for itself what the address is. [1438]

A. No.

Mr. Campbell: I will reframe my question.

The Court: The answer may go out.

(Testimony of Harold H. Maundrell.)

Q. Do you know whether or not that is the residence or office of Mr. Mooney, or was at that time?

A. No, I do not.

Q. I direct your attention to the fact that the address is 800 South Center Street; are you familiar with those premises?

A. No, I am not.

Mr. Gillen: Objected to as incompetent, irrelevant and immaterial.

The Court: He already answered he didn't know, Mr. Gillen.

Q. Now directing your attention to the contents of the letter itself, you say: "The total payment is \$175,000, of which \$100,000 has been paid down. Up until this time no credit of any kind to cover the capital investment has been entered on the books." Was that the fact as of March 12, 1947?

A. I don't remember.

Q. Well, will you examine the records of the Menlo Club which I show you, plaintiff's Exhibit 125—and may I have 126—I also show you plaintiff's Exhibit 126.

A. May I have the question, please?

(Question read.)

A. Well, all the capital investment is entered on the books. [1439]

Q. And was it entered as of March 12, 1947, of the date of that letter?

A. Yes, sir; I would say yes.

Q. I call your attention to plaintiff's No. 140, photostat, of furniture, fixtures and building, under

(Testimony of Harold H. Maundrell.)

date of April 30, 1945, that purports to set up the capital account in that record, does it not?

A. Yes, sir.

Q. And when was it, Mr. Maundrell, that you set up that page for which you hold photostatic copy?

Mr. Gillen: The page speaks for itself.

The Court: When it was set up—I don't believe you understood the question, Mr. Gillen.

Mr. Gillen: I believe so. I believe the page will show for itself.

Mr. Campbell: I asked him when he entered this.

The Court: He may answer the question.

A. I don't remember when I entered them.

Q. What is your best recollection?

A. I imagine it was done on or about the 8th of August.

Q. What year?                      A. Of 1945.

Q. Now as I recall your testimony on cross-examination, you stated on August 8th a check for 25 thousand dollars was issued, was cashed and the cash restored to Mr. Remmer; is that [1440] correct, in regard to the Schriber transaction?

A. I didn't see the actual cash restored to Mr. Remmer.

Q. What was done with the cash?

A. It wasn't on August 8th that I received that cash. It was a little bit later because at the time I remember speaking to Mr. Schriber and asking him to hold the check up if he would and let me know

(Testimony of Harold H. Maundrell.)

when he wanted to cash it and I would have the money in the bank at that time.

Q. I am referring to the transaction whereby you stated on cross-examination that in order to obtain some written record of the first 25 thousand dollars, a 25 thousand dollar check was issued; do you recall that? A. Yes.

Q. What were the circumstances there as you related them, Mr. Maundrell?

A. It seems that previous to my employment, Mr. Remmer had given Mr. Schriber 25 thousand dollars cash.

Q. Yes?

A. I had spoken to both Mr. Schriber and Mr. Remmer about the fact that it would be a whole lot better if we issued a check for the sum, so it would be reflected in the books, the books of the partnership. At the time I gave the check to Mr. Schriber I asked him at that time if he would hold it because I didn't have the 25 thousand dollars at that time. I would have to deposit in the bank to take care of the check and Mr. Schriber told [1441] me, "That is all right, I will let you know when I want to deposit it in the bank," and at that time I made a deposit to cover the check.

Q. And is that check No. 1242 to which you have referred, dated August 8, 1945? A. Yes, sir.

Q. Now isn't it a fact, Mr. Maundrell, that you entered that on the records which you noted as additional payment of 25 thousand dollars?

Mr. Gillen: What record is he referring to now?

(Testimony of Harold H. Maundrell.)

Mr. Campbell: Exhibit 140.

Mr. Gillen: Objected to as asked and answered and explained not once, but several times, in direct examination and on cross-examination, and not only by this witness but by two other witnesses.

The Court: You may answer the question.

A. No, it was not an additional payment.

Q. Now I ask you to examine this record, the first entry shows April 30, Gene Schriber, a debit of 75 thousand dollars for building and equipment and credit for payment of 25 thousand dollars, leaving a balance due of 50 thousand dollars; is that correct?

Mr. Gillen: What is that, 140?

Mr. Campbell: 140.

Mr. Gillen: May it please the Court, this witness has [1442] already testified that 140 was corrected by rewriting of the page which is now known as 125C, prosecution's Exhibit 125C, and he explained that very fully. There were two corrections made, if your Honor will remember, one correction as to the allocation of purchase price as against lease and furniture and fixtures, after the State of California had made its appraisal, and the other one the correction to show that a check had been given instead of 25 thousand dollars that had been given in cash. In other words, had taken back the 25 thousand dollars cash and replaced it with a check for 25 thousand dollars and that he corrected that in 125C, and 140, which was still retained by Mr. Maundrell, was the incorrect and inaccurate reflection of the

(Testimony of Harold H. Maundrell.)

transaction and that was corrected by 125C. Now counsel, after that explanation, is trying to use that again. He has already said this is incorrect.

The Court: The witness may answer, and if he has any explanation he would like to make, he may make it.

A. May I have the question again?

Mr. Campbell: I will reframe the question.

Q. I call your attention simply to the first item here of April 30, showing credit of 25 thousand dollars, further credit of August 8, No. 1242, 25 thousand dollars, next three items September 8, 1945, giving three check numbers with total of 25 thousand dollars, and the final item February 28, 1946, a payment to Gene Schriber of 25 thousand dollars. Now, Mr. Maundrell, [1443] I believe you testified all of the entries there were made by you, were they not? A. Yes, sir.

Q. So that this record was maintained by you up until February 28, 1946, the date of the last entry, was it not? A. Yes, sir.

Q. Now when was it that you made what has been referred to as the corrected sheet, 125C, in which the two changes to which Mr. Gillen referred, were made?

Mr. Gillen: I am going to offer for the record, may it please the Court, the objection that this has all been asked and answered and they are both prosecution's exhibits. 125C was offered by the prosecution and 140. It has been explained by Mr. Maundrell as to why the pages were rewritten, first



(Testimony of Harold H. Maundrell.)

of all because an appraisal different from the figure he had down had been given him by Mr. Schriber as Mr. Schriber's valuation, had been made by the State of California and tax was paid on that appraisal, and that is why he changed that to meet the appraisal made.

The Court: Objection will be overruled. He may answer the question.

A. I don't remember the exact date.

Q. Well, does the fact that the last entry made by you on government's Exhibit 140 is dated February, 1946, does that refresh your recollection as to whether or not plaintiff's 125C [1444] was made subsequent to some date in February of 1946?

A. Yes, it could have been.

Q. You say it could have been. Were you keeping two records simultaneously? A. No, sir.

Q. What is your best recollection?

A. It was made after that.

Q. Now you stated, I believe, in response to Mr. Gillen's question, that Mr. Ezralow was the first agent who called upon you; is that correct?

A. Yes, sir.

Q. And do you recall when he first made his appearance? A. No, sir.

Q. Do you recall that his investigation was commenced prior to your writing up 125C?

Mr. Gillen: Objected to as leading and suggestive and not proper redirect examination.

The Court: It may be leading.

Mr. Campbell: Well, I will reframe the question.

(Testimony of Harold H. Maundrell.)

Q. Do you recall when Mr. Ezralow started his investigation with relation to the time that 125C, the corrected ledger sheet, was set up?

A. No, I do not.

Mr. Gillen: Objected to as calling for the witness' opinion and conclusion. [1445]

The Court: It is already answered. The answer may stand.

Q. Do you recall ever having seen that corrected sheet prior to your appearance here?

A. Yes, I do.

Q. When did you see it?

A. I saw it in the office.

Q. When?

A. I don't know when, but sometime during my employment there.

Q. What is your best recollection?

Mr. Gillen: What is this referring to now?

Mr. Campbell: 125C.

Mr. Gillen: Well, your Honor—

The Court: There is nothing before the Court.

Mr. Gillen: Well, I am going to offer an objection to this. It is a very strange examination. He puts in records through witnesses and then tries to destroy his own records. It is not proper redirect examination.

Mr. Campbell: I ask the remark be stricken.

The Court: There is nothing before the Court. The remark will be stricken from the record.

Q. In response to counsel's question you stated

(Testimony of Harold H. Maundrell.)

about two months after you were there the State tax men came in; is that correct?

A. No, it was later than that. [1446]

Q. Do you recall when they came in?

A. No, I don't. I don't recall exactly the date they came in.

Q. As I recall your testimony, you said it was about two months after——

Mr. Gillen: Objected to as leading and suggestive and cross-examining his own witness.

Mr. Campbell: I am trying to get his testimony straightened out.

Mr. Gillen: I know what he is trying to do and it is not permissible.

The Court: Try to avoid leading questions.

Q. What is your present recollection as to how soon it was after you commenced your employment that the State sales tax men, as you call them, came in there? A. Sometime in '45.

Q. In 1945. Can you state when it was in relation to the time when the 1945 partnership return of the Menlo Club was filed, before or after?

A. It might have been after. I don't quite remember now, but it could have been in 1945.

Q. When was it in relation to the time the '46 partnership return of the Menlo Club was filed?

A. It was way before that time.

Q. Now calling your attention to 125C, the corrected ledger sheet, your attention was directed to the change in capital [1447] set-up of the acquisition of the lease, equipment and inventory; do you recall that? A. Yes, sir.

(Testimony of Harold H. Maundrell.)

Q. So that where on plaintiff's Exhibit 140 it had been divided 100 thousand dollars as cost of lease and 75 thousand dollars as cost of equipment and inventory, the new figures utilized were some 31 thousand odd dollars for inventory and equipment? A. Yes, sir.

Q. And the balance as being the cost of the lease. Now do you recall upon what basis, which of those two bases, the 1946 return was filed?

Mr. Gillen: That return would be the best evidence.

Mr. Campbell: Yes I will show it to him.

Q. Calling your attention to Exhibit 90, partnership return of the Menlo Club. It might take a few minutes to examine this. May I suggest a recess?

(Jury and alternate jurors admonished and recess taken at 2:30.)

2:40 P.M.

(Defendant present with counsel.)

(Jury and alternate jurors' presence stipulated.)

MR. MAUNDRELL

resumes the witness stand on further

Redirect Examination

By Mr. Campbell:

(Last question read.)

Q. I am referring to bases set forth in 140 of

(Testimony of Harold H. Maundrell.)

100 thousand [1448] dollars for the lease and 75 thousand dollars for the inventory or basis as set forth in 125C of 31 thousand dollars for the inventory and equipment and the balance for the lease.

A. Well, on this return it was on 125C. It was not on that, it was on the photostat; it was on the other.

Q. Now you were examining 91, which is the amended return—90, which is the original return—I apparently handed you the wrong exhibit. I beg your pardon. Will you examine that?

A. Well, the 1946 was made out previous to 125C.

Q. And the amended return was made out after 125C, is that correct, or used the same basis?

A. Well, has the same basis as 125C, yes.

Q. Calling your attention to the amended return and to the statement attached, which you testified in response to Mr. Gillen's question was drawn up by Mr. Haughey, Mr. Remmer's attorney, with your assistance, do you recall that? That is on the amended 1946 return, which is plaintiff's 91, and the statement, the long written statement which is made a part of that return?

Mr. Gillen: That wasn't drawn up with the assistance of Mr. Haughey and I never said so. My question was, wasn't it a fact that Mr. Maundrell had prepared—

Mr. Campbell: I will reframe the question.

Q. Who actually wrote that statement?

A. I actually wrote it. [1449]

(Testimony of Harold H. Maundrell.)

Q. Did you have any assistance in writing it?

A. Previous to writing it, I got all my information from Mr. Mooney.

Q. And you wrote that yourself?

A. Yes, I wrote it with the assistance of Mr. Ayton. I asked Mr. Ayton what he suggested and I wrote it.

Q. I call your attention to the fact that stated here the term of the lease is five years.

A. Yes, sir.

Q. Now what was the term of the lease?

A. Well, at that time I thought the term of the lease was five years, but they had an option for five additional years.

Q. Had you examined the lease at that time?

A. No, I hadn't seen the lease.

Q. And when you did examine it, you found it to be for ten years?

A. Well, I didn't find that until later. I was under the impression all the time it was a five-year lease with option for 5 years.

Q. Now directing your attention to government's Exhibit 89, return of 1945, which I believe you testified, in response to counsel's question, that you gathered the figures and gave to Mr. Ayton to prepare the return and then he returned it to you; is that correct?

A. The figures for Tiny's Waffle Shop were prepared by Mr. Shaw. [1450]

Q. Yes.

A. Those for Tiny's Waffle Shop and Bar.

(Testimony of Harold H. Maundrell.)

Q. Yes.

A. Those figures I turned over to Mr. Ayton.

Q. How about the Menlo Club?

A. The Menlo Club, I gave Mr. Ayton the payroll and utilities and rent and all the bills that I received from the Menlo Club.

Q. I call your attention to Item 9, promotion expense, \$286,837.75. What was the source of that figure?

Mr. Gillen: I was going to suggest to your Honor that this sounds to me like reopening direct examination rather than redirect. I think it is improper redirect and I will object to it on that ground.

Mr. Campbell: Counsel inquired to the source of the figures, also brought out this man had collected figures and turned them over to Mr. Ayton or to the other accountant for preparation of return.

Mr. Gillen: I withdraw my objection.

A. The Menlo Club in 1945, as I stated before, all the poker sheets had been lost, and taking the matter up with Mr. Ayton, he had been the auditor for the Menlo Club the previous years, he finally came to the conclusion that there was only one thing to do and that was to submit to the government the returns for 8 months during the previous year and make the same return to the government for 1945. [1451]

Q. Is that the source of this promotional expense?

(Testimony of Harold H. Maundrell.)

A. Yes, sir. Mr. Ayton handled all income tax returns.

Q. From your knowledge of the operation of the Menlo Club, was any such sum spent during 1945 for promotion?

Mr. Gillen: Objected to as improper redirect examination.

The Court: Objection overruled. He may answer the question.

A. Yes, sir.

Q. There was? A. Yes, sir.

Q. And in what manner was it spent?

A. The practice that was used previously by Mr. Ayton and the people who owned the Menlo Club, they called promotion the difference between the money that was given to players and the balance that was finally concluded after the returns were made. In other words, a man was staked to \$100 to play a game and he brought back \$80, there would have been a loss, and that is where those promotion expenses came in.

Q. Are you referring to the house men, that is, employees who were given money to sit in a game?

Mr. Gillen: This was answered in direct examination. He said some men were employees and some not, and some men required seven persons to play before they would enter a game.

The Court: Objection overruled. Answer the question. [1452]

A. I am referring to any house man that happened to play and the outside men who also played.



(Testimony of Harold H. Maundrell.)

Q. You say outside men, they had no connection with the set-up?      A. That's right.

Q. Was there some term used to apply to those individuals?

Mr. Gillen: That is objected to as incompetent, irrelevant and immaterial, what term is used. Not proper redirect.

The Court: Objection sustained.

Q. I believe you stated that similar agreements, in response to Mr. Gillen's question, similar partnership agreements to that which you produced here as between yourself and Mr. Remmer, relating to that 10 per cent interest, were also entered into by the other individuals?

A. There was an agreement given to every one of the partners.

Q. And will you state, were those all written agreements, do you know?      A. Yes, sir.

Q. You saw them?      A. Yes, sir.

Q. Were they all drawn at one time, if you know?      A. Yes, sir.

Q. Now will you state whether or not more than one agreement was given to any of the individuals?

Mr. Gillen: Do you mean more than one copy of the agreement? [1453]

Mr. Campbell: No, separate, different agreements.

A. I don't know.

Mr. Gillen: We will stipulate in one instance—

The Court: The witness said he didn't know.

Q. Now directing your attention to the fact there

(Testimony of Harold H. Maundrell.)

has been shown in the returns for 1945 and 1946 of the Menlo Club, the interest of Mr. Nelson, according to the returns, an increase from 10 per cent to 15 per cent, the interest of Mr. Remmer an increase from 40 to 55 per cent, the interests of Mr. Ditto and Mr. Fricker of 10 per cent, were new agreements drawn with respect to those changing interests?

Mr. Avakian: Objected to as contrary to the evidence because the witness testified the written agreements were in November, 1946, which was after the date these other partners dropped out. The evidence shows that.

(Question read.)

The Court: Is that contrary to the evidence introduced here?

Mr. Campbell: The two contracts which have been introduced here, those of this gentleman and Mr. Kyne, are dated in 1946, but are retroactive to 1945, April or May of 1945. Now the returns of the Menlo Club in 1945 purport to show interests in Remmer of 40 per cent, Kyne of 10 per cent, and so on down the line, Ditto and Fricker and Nelson for 10 per cent each. In 1946 return filed for that year showed the partnership [1454] interest to be Remmer 55 per cent, Kyne 15 per cent, Nelson 15 per cent, an increase of 5 per cent.

The Court: What is the objection?

Mr. Avakian: The testimony has been that these written agreements were drawn in November

(Testimony of Harold H. Maundrell.)

of 1946, Mr. Maundrell testified they were all drawn at the same time, and November, 1946, is after the time that Mr. Fricker and Mr. Ditto dropped out.

The Court: Is it after the time the 1946 return was filed?

Mr. Avakian: It is after the time 1945 was filed.

The Court: Is it after the time the 1946 return was filed?

Mr. Avakian: No, prior to the time 1946 was returned.

The Court: Objection overruled.

Mr. Avakian: I would like to explain further. I do not think your Honor got my point.

The Court: Yes.

Mr. Avakian: The point is, this is the purpose of the question, first, find out whether there were new partnership agreements drawn.

The Court: I do not think any of us now know what the question is.

Mr. Campbell: I will have to reframe the question.

Q. You were asked, Mr. Maundrell, if partnership agreements were drawn as to all partners. Directing your attention to the [1455] 1945 return, which lists the partners as Remmer 40 per cent, Kyne 15 per cent, Ditto 10 per cent, Nelson 10 per cent, Maundrell 10 per cent, Fricker 10 per cent and Turner 5 per cent, now were partnership agreements drawn as to all those individuals?

A. Yes, sir.

Q. And that included Ditto and Fricker?

(Testimony of Harold H. Maundrell.)

A. Yes, sir.

Q. And were they likewise drawn in November of 1946? A. Yes, sir.

Q. When had they terminated their relationship with the Menlo Club? A. At the end of '45.

Q. Now the 1945 return shows Oscar Nelson as having a 10 per cent interest. Was an agreement drawn with Mr. Nelson as to that 10 per cent interest? A. Yes, sir.

Q. Now the 1946 return shows that he had a 15 per cent interest. Was a new agreement drawn?

A. Not to my knowledge.

Q. After the end of 1945 were any further amounts accrued in the account set up on the records for Mr. Fricker and Mr. Ditto?

A. No, sir.

Q. Now you stated, I believe, that with respect to the bank roll at the Menlo Club, that a portion of that was made up of [1456] markers or IOUs, as shown at the right-hand lower corner of the page, poker sheets; is that correct? A. Yes.

Q. Did you ever yourself verify the amount of cash on hand in the bank roll?

Mr. Gillen: That has been asked and answered at least seven times.

The Court: That has already been answered.

Mr. Campbell: Except on cross-examination, your Honor, it was brought out for the first time the assertion of the witness——

The Court: You may answer the question.

Mr. Gillen: Now, may it please the Court, that

(Testimony of Harold H. Maundrell.)

is not the truth. Mr. Kyne testified that markers were considered the same as cash and Mr. Kyne was the government's witness.

Mr. Campbell: I am referring to this witness' testimony.

The Court: Objection is overruled. Answer the question.

A. May I have the question?

(Question read.)

A. No, sir.

Mr. Campbell: At this time I am going to ask to have marked for identification three sheets bearing date January 13, 1946, headed "Poker Sheets," as one exhibit.

The Clerk: 143.

Q. From what source, Mr. Maundrell, did you receive your [1457] information that markers were counted as part of the cash on hand or bank roll?

A. Right at the beginning. Mr. Fricker was the man that acquainted me with the whole operation of the club.

Q. Did you at any time have any personal observation with regard to the amount of cash that was actually there or the treatment of the markers as a part of or as not a part of the bank roll?

A. I did not.

Q. I am going to call your attention to plaintiff's Exhibit 143 for identification and ask you if you recognize those sheets?

A. They are similar to the poker sheets we used.

Q. Now will you compare the entries thereon

(Testimony of Harold H. Maundrell.)

with the entries made by you in your records from the poker sheets for that day, for the purpose of ascertaining if the employees listed were employees on that date and if the amounts set forth on those poker sheets were utilized by you in keeping the books and records of the Menlo Club?

Mr. Avakian: We object to the use of these documents in any manner unless they are first received in evidence, and we object further to the prosecution's use of them at this time on the usual grounds that we have made to all of these records, which were taken by the government upon the assurance that they would return them but which was not kept.

Mr. Campbell: I am going to object to that statement, [1458] if the Court please.

The Court: That will be stricken from the record.

Mr. Avakian: The evidence from this witness shows——

The Court (Interceding): There is no evidence to that effect.

Mr. Avakian: Yes, there is. This witness and Mr. Kyne both testified that records were turned over to the agents——

The Court (Interceding): The remark will be stricken.

Mr. Avakian: I believe I am correct in my statement.

The Court: You have heard my ruling.

(Testimony of Harold H. Maundrell.)

Mr. Avagian: Yes, I heard your ruling, naturally.

The Court: Very well.

Mr. Avakian: But I wish to have an objection to the use of these.

The Court: The usual objection made before?

Mr. Avakian: Yes, and an additional objection.

The Court: All right.

Mr. Avakian: No proper foundation has been laid for the use of these sheets because there is no showing of the authenticity of them. If your Honor will look at the sheets, there is nothing on the sheets to show to what business they related. This witness has testified simply they are similar. The record will show that these sheets were produced not by the witness, but rather by the government from their own files and we object to the use of any such document unless and until the government [1459] produces witnesses who obtained these documents to show how and where they obtained and to testify that these are the very ones they did obtain, because in the absence of that we have no way of knowing whether these are the actual sheets or copies.

The Court: Objection overruled.

Q. Do you still have the question in mind?

(Question read.)

A. As to the amounts of the records that were kept by me, this is a sheet of 11-3-46, No. 1 shows the tables took in \$421.50, which is correct.

Q. The same on both records which you have before you?

(Testimony of Harold H. Maundrell.)

Mr. Gillen: I object——

Mr. Campbell: That may go out.

The Court: I do not think the contents of this should be allowed to go in the record. It will be stricken.

Q. Just make a comparison to yourself without stating, so you can answer the main question yes or not.

(Question read.)

Mr. Gillen: Of course, your Honor, that certainly is by indirection and subterfuge getting before the jury the contents of a document before it is introduced.

The Court: I think it is a means of laying the foundation.

Mr. Gillen: I do not think he can do it that way unless this gentleman has some knowledge of those being authentic [1460] sheets.

The Court: I think he could.

Mr. Gillen: Well, if you want to let it go in, what is in the document.

The Court: Oh, I don't want anything like that. The question has two departments. Break that question down, first as to employees, then as to figures.

Mr. Gillen: Of course, you see there is nothing to indicate whether any names are employees, or if employees, of what place. What we are complaining about, this man has to conclude a lot of things before he can answer that.

The Court: We will see what happens.



(Testimony of Harold H. Maundrell.)

Q. I am handing you Exhibit 124A, which has previously been identified as the payroll record of the Menlo Club, is that correct? A. Yes, sir.

Q. Now, I ask you to examine plaintiff's Exhibit 143 for identification and for the purpose of ascertaining if the persons set forth on 143 for identification as employees were on the date shown on 143 for identification employees of the Menlo Club and receiving the amounts as set forth on 143 for identification?

Mr. Gillen: We ask again for your Honor to look at 143 and your Honor will see there is nothing there that satisfies anybody in showing him as an employee. That is an assumption. [1461]

The Court: I don't understand the question in that light. You may proceed.

A. I recognize—

The Court (Interceding): Don't state the contents. Just answer the question. I wish that the question could be broken down in two parts, first as to the persons and secondly as to the figures, then we could get answers yes or no.

Q. I will ask you first if the figures shown on 143 for identification, under the headings, "Amount Loaned," "Return" and "Amount," are the same figures that were used by you in the records of the Menlo Club, Exhibit 126, for the date of January 13, 1946?

Mr. Gillen: Objected to, the document speaks for itself, is the best evidence of what it contains,

(Testimony of Harold H. Maundrell.)

and also it is a leading question on the contents of a document not yet admitted in evidence.

The Court: Objection overruled. You may answer the question. A. Yes, sir.

Q. Now, do you recognize whether or not on Exhibit 143 for identification, whether there appear to be the names of employees of the Menlo Club and if so, if the records heretofore introduced in evidence as pay roll records of the Menlo Club, being government's Exhibit 124A, indicate that those persons were [1462] employed upon that date?

Mr. Gillen: I am going to offer the objection——

The Court: Objection to that question will be sustained.

Q. Will you examine Exhibit 124A and state whether or not on January 13, 1946, there was employed a man by the name of Byrne, and if so, what was his rate of compensation?

The Court: What exhibit are you referring to? Did you ask this witness to examine Exhibit 143?

Mr. Campbell: I asked him to examine this, yes, sir, and to also examine a record which is here in evidence and see if the same information is contained on both this and the record which he took and which he previously testified he obtained from the poker sheets which are here in evidence, as to certain dates.

The Court: I wonder if we couldn't have the question framed to show just names without showing any implication as to whether they are employees or not?

(Testimony of Harold H. Maundrell.)

Mr. Gillen: There is a very simple way of laying foundation——

The Court (Interceding): We don't need any further remarks.

Mr. Gillen: I would like your Honor to listen to the grounds of my objection.

The Court: I don't want to listen to you.

Q. Let me ask you this—referring to 143 for identification [1463] and to the names appearing in the upper right-hand corner, and using, if necessary, Exhibit 124A, pay roll record, which is in evidence, to refresh your recollection, if necessary, I will ask you whether or not the individuals set forth there on this exhibit for identification were employees of the Menlo Club on that date?

Mr. Gillen: I am going to offer an objection, may it please the Court, if your Honor will look at 143 and see there are last names used. There happens in this very courtroom to be two men named Gillen, a man I never met before, the crier, and here is a bunch of last names and nicknames and how can this man say they are the same names as appeared as employees? I object to the question as leading and suggestive, calling for opinion and conclusion of the witness, getting before the jury matters in a document not admitted by your Honor into evidence, improper redirect examination, incompetent, irrelevant and immaterial.

The Court: Objection overruled. You may answer the questions.

A. Yes, I recognize some of these names.

(Testimony of Harold H. Maundrell.)

Q. As being employees on that date?

A. Yes, sir.

Q. Will you state whether or not this is the type of sheet from which you made up the books and records of the Menlo Club as to income and as to wages? [1464]

Mr. Gillen: What is he referring to now, this type of sheet?

Mr. Campbell: 143 for identification.

Mr. Gillen: I object as having been asked and answered. He said they were similar to the poker sheets.

The Court: Objection overruled.

A. The wages were not taken off that sheet. The wages were taken off Exhibit 124A.

Q. From what source was 142A written up?

A. It was written by the secretary of the Menlo Club.

Q. And do you know from what source she obtained those figures?

A. She received those from the cashiers every day.

Q. I believe you previously stated the poker sheets were kept by the cashiers?

A. Yes, sir.

Mr. Campbell: I offer this in evidence as Exhibit 143.

Mr. Gillen: To which we object, no proper foundation laid and we haven't any opportunity to examine the person who obtained those sheets. They

(Testimony of Harold H. Maundrell.)

were obtained undoubtedly by some government agent who is probably present here in court.

The Court: Objection overruled. The exhibit may be admitted in evidence.

Q. Calling your attention to plaintiff's Exhibit 143, bank roll of ten thousand dollars, did you observe that figure? A. Yes, sir. [1465]

Q. I call your attention, what are these items in the lower right-hand corner, if you know?

A. Markers.

Q. I call your attention to the fact that the total amount of markers as shown thereon is \$10,400. I further call your attention to, under the advances, as I believe you have identified them, there is amount of \$480. Do you observe those figures?

A. Yes, sir.

Q. Now, do those figures refresh your recollection as to whether or not the markers were considered or taken as part of the bank roll?

A. Yes, sir.

Mr. Gillen: I am going to offer the objection counsel is cross-examining his own witness and it is an attempt to impeach, through this prosecution witness, Mr. Kyne, who related the meaning of markers and names of the markers and differences in figures on the poker sheets, namely, that it might mean a man had picked up a marker and that might have changed the figure on the markers, and that they were treated as cash and treated as part of the general bank roll.

(Testimony of Harold H. Maundrell.)

The Court: Objection will be overruled. He may answer the question.

Q. That is your recollection?

A. Yes, sir. [1466]

Q. Will you state your recollection as to whether they were a part of the bank roll?

A. I have always been under the impression they were.

Q. That day then there would be a minus bank roll, is that correct?

A. Yes, sir. That is in the morning only.

Q. That is at the start of the day's business?

A. Yes, sir.

Q. Before any profits were realized for that day?

A. Yes, sir.

Mr. Avakian: Now, your Honor, may we have an opportunity to make an objection to that question?

The Court: No, we will let it stand.

Mr. Avakian: We move to strike the answer.

The Court: Motion denied.

Q. Now, Mr. Maundrell, at the time that Mr. Nelson increased his interest from 10 to 15 per cent and Mr. Remmer increased his interest from 40 to 55 per cent, was any amount paid by both or either of them, if you know, for that increased percentage?

Mr. Gillen: Objected to as not proper redirect examination.

The Court: I think that objection is good.

Mr. Gillen: Nothing was gone into—

The Court: I think that objection is good, not proper [1467] redirect.

(Testimony of Harold H. Maundrell.)

Mr. Campbell: Then for the purpose of that question, I ask permission to ask on direct examination.

Mr. Gillen: May I respectfully suggest counsel should not be given seven or eight to reopen. He should conduct his direct and be through with it and I respectfully submit we object to his being accorded seven or eight opportunities.

The Court: He may ask the question on direct examination.

Direct Examination

(Last question read.)

A. Not to my knowledge.

Mr. Campbell: That's all. You may cross-examine.

Recross-Examination

By Mr. Gillen:

Q. Mr. Maundrell, did you ever see an agreement, wherein Mr. Ditto acknowledged—the agreement was signed by Mr. Ditto and Mr. Remmer—Mr. Ditto acknowledged that he received from his interest at the time he withdrew from the partnership of the Menlo Club 14 thousand odd dollars?

Mr. Campbell: Objected to as not the best evidence.

The Court: Objection overruled. Answer the question.

A. Yes, sir.

Q. Now, with regard to Mr. Nelson's with-

(Testimony of Harold H. Maundrell.)

drawals of two thousand dollars at various times, not including the money that he withdrew to pay income tax, either to the federal government [1468] or to the State of California, there was an entry made deducting his withdrawal from his credit there in your book, was there not, in the ledger?

A. Yes, sir.

Q. And that in effect was his marker or IOU that was deducted from whatever credit he had on the books, isn't that true?

Mr. Campbell: I object to the question in that form.

The Court: He may answer the question.

Q. Isn't that so?

A. Well, that was a direct payment to Mr. Nelson against his capital account.

Q. And that was the record of Mr. Nelson's credits or his debits, wasn't it? A. Yes, sir.

Q. Now, with regard to Mr. William Remmer, the nephew of Mr. Elmer Remmer, isn't it a fact that Mr. Elmer Remmer originally planned on placing his nephew, William Remmer, in charge of the Menlo Bar and Tiny's Waffle Shop?

Mr. Campbell: Objected to as calling for his conclusion as to what Mr. Remmer may or may not have had in mind.

The Court: He may answer if he knows.

A. Yes, sir.

Q. That was the explanation that you were attempting to make the other day to Mr. Campbell, was it not, in your direct examination? [1469]



(Testimony of Harold H. Maundrell.)

A. Well, I started in and was stopped.

Q. Now it is true, is it not, that in contemplation of that Mr. William Remmer's name was put up as the employer's name in the various security, withholding and contribution taxes, isn't that so?

A. Yes, sir.

Q. It is within your knowledge, is it not, and a fact, that Mr. William Remmer decided not to quit his place of employment where he was and enter into this enterprise, isn't that true?

Mr. Campbell: Objected to as incompetent.

Mr. Gillen: I am asking him if it isn't a fact. If he doesn't know, he can answer he doesn't know.

The Court: Objection will be sustained.

Q. Well, do you know whether or not Mr. William Remmer remained at his place of employment and did not go into the business?

A. He did not go into the business. He stayed on the job where he was working.

Q. Now it is true, is it not, that as a result of having originally put his name as employer the first year, you had to make the return in his name as employer, isn't that so?

Mr. Campbell: Objected to as calling for a legal conclusion.

The Court: He may answer the question.

A. The employer's number was requested in his form and as long [1470] as the number had been issued to us in his name, I left his name right on the return.

Q. However, Mr. William Remmer never ap-

(Testimony of Harold H. Maundrell.)

peared as a partner or an employer or owner in any of the income tax returns that have been introduced here by the prosecution, isn't that true?

A. Yes, sir.

Q. All the partners were set forth in those tax returns and Mr. William Remmer was not mentioned in those tax returns, isn't that true?

A. Yes, sir.

Q. Now referring again to the prosecution's Exhibits 140 and 125C, the fact is, isn't it, Mr. Maundrell, that after the State of California sales tax man had made an appraisal of the furniture and fixtures and merchandise of the Menlo units and had placed their appraisal figure, that that was your reason for making one correction from the original sheet, Exhibit 140, to the sheet 125C, isn't that true?

A. Yes, sir.

Q. And also the other correction that we went into this morning, with regard to the amount of money paid for the Menlo Club originally a cash payment, which was later substituted by a check payment, was the other correction, isn't that true?

Mr. Campbell: Objected to—that has been asked and answered several times.

The Court: Objection overruled. [1471]

Q. Isn't that true? A. Yes, sir.

Q. And the initial payment for that 25 thousand dollars and the check was the one single 25 thousand dollar payment, isn't that true?

A. Right.

Q. And it was not two payments of 25 thousand

(Testimony of Harold H. Maundrell.)

dollars apiece, one by cash and one by check, isn't that true?

A. Well, they were made; one was withdrawn.

Mr. Gillen: I think that is all.

**Redirect Examination**

By Mr. Campbell:

Q. In response to counsel's questions, you said you had seen some kind of agreement between Mr. Remmer and Mr. Ditto? A. Yes, sir.

Q. When did you see that? A. Last night.

Q. Where did you see that?

A. Mr. Gillen's apartment.

Q. Had you ever seen it prior to that time?

A. No, sir.

Q. Did you ever have any knowledge with reference to it prior to that time? A. No, sir.

Q. Do you know, of your own knowledge, whether any 14 thousand dollars was paid to Mr. Ditto? [1472] A. No, sir.

Q. Did you ever talk to Mr. Ditto about any such agreement? A. No, sir.

Mr. Campbell: I think that is all.

The Court: Any further questions?

Mr. Gillen: That's all.

The Court: Any reason why this witness can not be permanently excused at this time?

Mr. Campbell: Subject to recall if necessary.

The Court: You are satisfied to have him return to his home?

Mr. Campbell: Yes.

Mr. Gillen: We are satisfied.

(Witness excused.)

(Jury and alternate jurors admonished and recess taken at 3:35 p.m. until Wednesday, January 2, 1952.) [1473]

January 2, 1952, 10:00 A.M.

(Defendant present with counsel. Mr. Lohse absent.)

(Presence of the Jury and alternate jurors stipulated.)

**WILLIAM J. GRAHAM**

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

**Direct Examination**

By Mr. Campbell:

Q. Will you state your full name?

A. William J. Graham.

Q. Where do you reside?

A. 524 California Avenue, Reno.

Q. What is your business or occupation?

A. Hotel business and club business.

Q. In Reno, Nevada? A. In Reno, yes.

Q. Are you acquainted with the defendant in this case, Elmer Remmer? A. Very well.

Q. How long have you known Mr. Remmer?

A. Since 1912.

(Testimony of William J. Graham.)

Q. Have you at any time been associated with Mr. Remmer in any business enterprise?

A. Yes, Cal-Neva Lodge.

Q. When did you first become associated with him in connection with Cal-Neva Lodge? [1474]

A. '24—'26.

Q. And for the purpose of the record, Cal-Neva Lodge is located at the State line on California and Nevada at Lake Tahoe, is that correct?

A. That is right.

Q. And as I understand a small portion of the building is on the California side and the balance is on the Nevada side? A. That's right.

Q. What year was it, did you say, you became associated in that enterprise?

A. I think around '24. I believe it was '24 or '26, we bought it.

Q. When you say we bought it, to whom are you referring?

A. Well, when we first bought it, it was the old Cal-Neva. I forget the man's name, from Australia. He built it and I think it was around '26.

Q. I was asking you when you say "we bought," to whom do you refer?

A. Myself and Mr. McKay and Mr. Hall and we went to the bank and borrowed the money from the bank and put Mr. Remmer in as equal partner.

Q. As I understand your answer, you and Mr. Hall and Mr. McKay went to the bank and borrowed the money and you say you put it in Mr. Remmer as equal partner? A. Yes. [1475]

(Testimony of William J. Graham.)

Q. Did Mr. Remmer contribute any money or capital toward the acquisition of the club?

A. No, sir.

Q. Was all of the money that was utilized for that purpose borrowed from the bank?

A. Yes. It was paid off to the bank, all the indebtedness.

Q. Was the business subsequently incorporated under a corporation known as the Cal-Neva, Inc.?

A. That's right.

Q. And at this time do you recall approximately when it was that the business was incorporated?

A. No, right off I couldn't tell you. I would have to look at the records. Mr. Woodburn has those records.

Q. Was it in 1930 as you recall?

A. I think it was incorporated before that.

Q. Incorporated shortly after you acquired it?

A. I think so, yes.

Q. How were shares issued, if you recall, that is to say, were they in equal amounts as among four individuals?

A. Yes. I think the stock was kept in Mr. Woodburn's office.

Q. As to shares issued of the corporation, were they issued in the name of each of the four individuals equally?

A. Yes, that's right.

Q. Is Mr. Hall still alive?

A. No, Mr. Hall died. [1476]

Q. Do you recall approximately when Mr. Hall died?

A. I can't say the year.

(Testimony of William J. Graham.)

Q. Well, within a year or two do you recall?

A. Mr. Hall is dead about ten years.

Q. Now at the time of Mr. Hall's death, what, if anything, was done in relation to the stock standing in his name?

A. Well, we bought his stock from his wife.

Q. When you say "we"?

A. The corporation bought it.

Q. That is Cal-Neva, Inc., purchased the stock from his wife, is that correct?

A. Yes, that's right.

Q. Now I will ask you whether or not you and Mr. McKay at some subsequent time sold your stock in Cal-Neva, Inc.?

A. At any time—did you say up until when?

Q. Well, at any time? A. Sold it in 1946.

Q. To whom did you and Mr. McKay sell your stock? A. Sold to Mr. Remmer.

Q. So that I take it all the stock was then in Mr. Remmer's name, is that correct?

A. He didn't have the stock. The stock was in Mr. Woodburn's office. They hold the stock until it was paid and we still have the stock.

Q. Mr. Woodburn held it as escrow? [1477]

A. Still has it as escrow until the place is paid off.

Q. All outstanding stock was then sold to Mr. Remmer through this escrow, is that right?

A. Yes.

Q. During the time and up until the time that you and Mr. McKay sold your interest in Cal-Neva,

(Testimony of William J. Graham.)

through this escrow to Mr. Remmer, who was in active management of Cal-Neva Lodge?

A. Mr. Remmer.

Q. Did you or Mr. McKay take any active part in the management?

A. Yes, we used to go up and stay around in the summer time, but Mr. Remmer ran the business all the time.

Q. Now it is a fact, is it not, Mr. Graham, that you and Mr. McKay were away from the State for a period of time prior to the sale of the stock?

A. Yes, sir.

Q. And what period of time was that?

A. 1939 to 1945.

Q. During that period of time did you or Mr. McKay take any part whatsoever in the management of Cal-Neva?

A. No. We were away, we couldn't take part in it.

Q. And then it was after your return that you sold this stock? A. Yes.

Q. I am going to have this document which is headed "Memorandum and Receipt" marked for identification as 144 for identification. I show you government's Exhibit 144 for identification and ask [1478] you if you recognize the three signatures appended thereto? A. Yes.

Q. Whose signatures are they?

A. One is mine, one is Mr. McKay's and one Mr. Remmer's.



(Testimony of William J. Graham.)

Q. And I will ask you whether or not this document had to do with the sale of yours and Mr. McKay's stock to Mr. Remmer?

Mr. Gillen: Objected to, the document speaks for itself.

The Court: Objection sustained.

Mr. Campbell: I was laying the foundation. I will offer it in evidence, 144.

Mr. Gillen: I think, may it please the Court, we will have to offer the objection that there is no foundation laid to show that this document was ever delivered to the parties involved and I think that foundation should be laid.

Mr. Campbell: The signatures of the three parties.

The Court: Can you go a little farther with it, Mr. Campbell?

Mr. Campbell: Well, I had asked this question, to which the objection was sustained.

The Court: Can you meet this suggestion of counsel?

Mr. Campbell: Yes, your Honor.

Q. Were you present at the time the three signatures were affixed here? A. Yes.

Q. And you recall where this document was signed? [1479]

A. In Mr. Thatcher's office, Mr. Thatcher's room.

Q. You have referred to an escrow being held in Mr. Woodburn's office with relation to the sale

(Testimony of William J. Graham.)

of stock to Mr. Remmer; was this the document which was drawn in connection with that escrow?

Mr. Gillen: Same objection—What happened to the document when it was prepared—

The Court: Objection overruled.

(Question read.)

Mr. Gillen: We offer the same objection, that the document itself is the best evidence of what it was.

(Question read.)

The Court: Objection overruled. Answer the question.

A. The stock and receipt was kept and they still have it.

Q. Was it drawn in connection with the sale of the stock?

A. Yes, it was drawn for the sale of the place.

Mr. Campbell: I offer it in evidence.

A. They still have it.

Mr. Gillen: Our objection is still no foundation laid to show what was done with the document. Like a deed, a deed can be signed—whether it is ever delivered or not is another matter.

The Court: Objection overruled. The exhibit will be admitted in evidence, 144 admitted.

Mr. Campbell: At this time I wish to read this document:

(Testimony of William J. Graham.)

(Reads.)

**"Memorandum and Receipt**

**"J. C. McMay is the owner [1480] of 6,000 shares of the capital stock of Cal-Neva, Inc. W. J. Graham is the owner of 5,000 shares of the capital stock of Cal-Neva, Inc.**

**"Elmer Remmer is the owner of 6,000 shares of Cal-Neva, Inc., and**

**"J. C. McKay, W. J. Graham and Elmer Remmer are also the joint owners, one-third each, of 6,000 shares of the capital stock of The Cal-Neva, Inc., which last-mentioned shares cost \$28,125.00.**

**"J. C. McKay and W. J. Graham have this day sold to Elmer Remmer the stock that they separately own and have also this day sold to Elmer Remmer their two-thirds interest in 6,000 shares of stock of Cal-Neva, Inc., held jointly by McKay, Graham and Remmer.**

**"Mr. Remmer has this day paid to J. C. McKay and W. J. Graham, to be shared equally by themselves, \$466,666.66, the receipt whereof is hereby acknowledged.**

**"Dated this 10th day of July, 1946.**

**"J. C. McKAY,**

**"W. J. GRAHAM.**

**"OK**

**"Elmer Remmer."**

**Now, Mr. Graham, at the time of the acquisition of this document dated the 10th day of July, 1946, was**

(Testimony of William J. Graham.)

there in fact paid to you and Mr. McKay the sum of \$466,666.66? [1481]      A. No, sir.

Q. Was any money at all paid to you on that occasion or up to that time in connection with the sale of that stock?      A. No.

Q. Did you subsequently and during the year 1946 receive any sums of money on account of the sale of that stock?

A. Yes, the first payment was in September, we received 100 thousand dollars, fifty for myself and fifty for Mr. McKay. That was the first payment.

Mr. Campbell: I am going to ask a photostatic copies of two checks be given 145 for identification.

Q. Do you recall the date in September that you received those payments, Mr. Graham?

A. September 24th it says here. I think it was around September 24th.

Q. Now, during the year 1946 did you or Mr. McKay receive any further payments in connection with the sale of that stock?

A. No, that was all that year. We received—

Q. No, we must confine it to that year.

A. Oh.

Mr. Gillen: The defense will stipulate that this photostat may go in evidence.

The Court: Will you accept the stipulation?

Mr. Campbell: Yes, I accept.

The Court: Exhibit 145 will be admitted in evidence. [1482]

Q. Mr. Graham, I show you government's Exhibit 145, photostat of two checks, both dated Sep-

(Testimony of William J. Graham.)

tember 24, 1946, each in amount of 50 thousand dollars, one payable to William C. Graham and one to James C. McKay, bearing signature Cal-Neva Lodge by James B. Jeffers, and bearing respective endorsements William J. Graham and James C. McKay, and ask you if those were checks received by you in respect to the 100 thousand dollars paid to yourself and Mr. McKay in September, 1946?      A. Yes, that is correct.

Q. Calling your attention again to plaintiff's Exhibit 144, "Memorandum and Receipt," wherein it is alleged the sum of \$466,666.66, does that represent the sale price of yours and Mr. McKay's stock to Mr. Remmer?      A. Yes.

Q. And after the payment of the 100 thousand dollars, what amount remained due as of December 31, 1946 from Mr. Remmer to you and Mr. McKay?

A. Just take 100 thousand off and that is what remained due us.

Q. That would be \$366,666.66, is that correct?

A. Yes.

Q. Calling your attention to plaintiff's Exhibit 145, the two checks bearing the signature of James B. Jeffers, are you acquainted with James B. Jeffers?      A. Yes.

Q. Do you know what his connection, if any, was with Cal-Neva [1483] Lodge at the time these checks were issued?

A. Well, he was supposed to be manager around there with Mr. Remmer, bookkeeper or manager.

(Testimony of William J. Graham.)

Q. Had he been there, if you know, prior to the time you sold out to Mr. Remmer?

A. Yes, he worked there four years.

Q. Now during the period of time that you and Mr. McKay remained interested in Cal-Neva Lodge, were any profits or dividends distributed?

A. Just one dividend. That was in '34, I think.

Q. In 1934? A. Yes.

Q. And aside from that year were any profits distributed?

A. If we made anything in the place we built more cabins and put it in the property.

Q. But so far as distribution of profits to the partners? A. Yes, that's right.

Q. I believe you stated during that period of time the bank loan was paid off, was it not?

A. Oh, yes.

Q. And improvements made on the property?

A. That's right.

Q. Now, during the period of time that you were there and aside from the year 1934, when a dividend was distributed, was any salary or compensation paid to Mr. Remmer? [1484]

A. No.

Q. Incidentally, what period of the year was the Cal-Neva Lodge open during the period that you and Mr. McKay were interested in it?

A. End of June—the 15th of June until September; sometimes the 30th of June.

Q. Did you at any time, up to and including the

(Testimony of William J. Graham.)

period of December, 1946, have any other business interests with Mr. Remmer?      A. No.

Q. Are you acquainted with former revenue agent A. V. Barcy?      A. Yes.

Q. Do you recall an occasion upon which Mr. Brady made examination of Cal-Neva, Inc., as well as some other unrelated enterprises in which you were interested?      A. Yes, I do.

Q. Do you recall in what year that was?

A. I can't tell you the year off-hand.

Q. Well, do you recall whether or not that was prior to your leaving the State for the period of time you have referred to?

A. Oh, yes; that was before that.

Q. And you left when?      A. '39.

Q. The latter or early part?

A. The latter—October.

Q. Do you recall when it was in relation to that time? [1485]      A. Right around '34.

Q. What were the circumstances surrounding the sale of yours and Mr. McKay's interest to Mr. Remmer?

Mr. Gillen: Objected to as incompetent, irrelevant and immaterial, what the circumstances were. I don't know what bearing it would have on the issues in this matter.

The Court: I think it is a rather broad question, Mr. Campbell.

Mr. Campbell: Very well, I will withdraw it.

Q. Now, I will ask you, Mr. Graham, whether or not, during the years 1944-1946 inclusive, you

(Testimony of William J. Graham.)

had occasion to loan Mr. Remmer personally any money?      A. 1946, yes.

Q. And in what month was that?

A. February.

Q. And what was the amount involved?

A. Ten thousand.

Q. And how was that given, by your personal check?      A. Yes, that's right.

Q. And will you state whether or not that amount was still outstanding as of the end of 1946? Did he still owe you?

A. He still owed me, didn't pay it until, I think in 1947.

Q. So he still owed that money at the end of 1946?      A. Yes.

Q. Did you loan him any other money in 1946? [1486]

A. Yes, he phoned me from San Francisco and he said, "I have my income tax to pay," he said, "Will you loan me seven thousand dollars? I will send an attorney over to pick up the money," so I gave him a check for seven thousand.

Q. Did he say when he would pay it back?

A. He said he would pay it back in a week or so, so he came up in ten days and paid that money.

Q. So that was not outstanding in 1946?

A. No.

Q. Did he owe you any other money in 1946?

A. He owed me ten thousand.

Q. That is all?



(Testimony of William J. Graham.)

A. Outside the money he owes for the corporation.

Q. You are referring to the purchase of the stock? A. Yes.

Q. But he owed you no other personal loans?

A. No, I don't remember that he owed me other than that ten thousand he owed.

Q. Did he owe you any personal loans at the end of '45?

A. No. '45, I didn't get home until October, 1945. I was away all them years.

Q. Now, during the period of time that you and Mr. McKay were interested in Cal-Neva up to the time that you sold your interests to Mr. Remmer who, if any one, supervised the keeping of the records at Cal-Neva? [1487]

A. The records were kept by Mr. Semenza.

Q. That is Mr. Lawrence Semenza of Reno?

A. Yes, the auditor.

Q. Were they kept by him from the inception, from the beginning of Cal-Neva Lodge?

A. Yes, I am sure they were.

Q. He has, has he not, been accountant for Mr. McKay and yourself for a number of years?

A. Yes, he has been our accountant for a number of years?

Mr. Campbell: You may cross-examine.

**Cross-Examination**

By Mr. Gillen:

Q. Mr. Graham, just a couple of questions. The Exhibit 144, which sets forth the transaction of you

(Testimony of William J. Graham.)

and Mr. McKay selling to Mr. Remmer your interests, that was prepared in Mr. Thatcher's office?

A. The office of Woodburn and Thatcher. Mr. Thatcher is the one who prepared it.

Q. Although it recited that that day, as I understand your testimony, you and Mr. McKay sold to Mr. Remmer for \$466,666.66 and that he had paid you, that wasn't actually the fact at that time?

A. Oh, no; he didn't pay any. He was to pay us that money. That is why Mr. Thatcher drew that up.

Q. In the year 1946 then, as I understand it, the only payment that you and Mr. McKay received were those reflected by these [1488] photostat checks in Exhibit 145, which would be 50 thousand dollars check to each of you, is that correct?

A. That is correct.

Q. And that was the check of Cal-Neva Lodge, was it not, or Cal-Neva corporation, drawn on the Nevada bank; is that correct?

A. Cal-Neva Lodge, that's right.

Q. And the check was signed by Mr. James B. Jeffers? A. Yes, sir.

Q. So it was out of Cal-Neva account of the Main Office of the First National Bank of Nevada, is that correct? A. That is correct.

Q. And then, as I recall, you received no other payments that year? A. No.

Q. As a matter of fact, Mr. Graham, this total of 100 thousand dollars of these two checks that were paid, 50 thousand to you and 50 thousand to

(Testimony of William J. Graham.)

Mr. McKay, in 1946 was borrowed by Mr. Remmer out of Cal-Neva?

A. I don't know where he got it.

Q. All you know it came from Cal-Neva bank account?

A. Cal-Neva, but I don't know where he got it. When we sold out to Mr. Remmer there was seventy-five thousand in the corporation.

Mr. Gillen: I think that is all.

Mr. Campbell: That is all.

(Witness excused.) [1489]

Mr. Campbell: At this time I wish to have marked for identification what purports to be a general ledger of Cal-Neva, Inc., 146 for identification, and a volume purporting to be pay roll records of Cal-Neva, Inc., as 146A for identification. These two records, which were produced pursuant to subpoena for the corporation records will be offered in evidence.

Mr. Gillen: Well, may we examine them first of all?

The Court: Yes, you may, certainly.

Mr. Gillen: May it please the Court, we have no objection to the admission of these two exhibits, once they have been properly identified and proper foundation laid, but merely having them marked and offering them now, without having a witness identify them and without being able to cross-examine as to the contents, we think counsel should lay the foundation.

Mr. Campbell: Now, if the Court please, these were produced pursuant to subpoena which was served on Mr. Semenza and were produced at that time by counsel, who stated they were making no objection as to the production of these corporate records. They were delivered to the clerk and just now taken from the clerk's custody. In view of those circumstances, I hardly see that the objection is proper.

Mr. Gillen: The subpoena does not authenticate records. They may be the wrong records and we would like a witness on the witness stand who might explain the contents and details concerning them and we can have an opportunity to cross-examine. [1490] If they are merely put in and read, we are bereft of any opportunity to cross-examine.

The Court: I think the objection is well taken.

Mr. Campbell: In view of the circumstances of the production?

The Court: Yes.

Mr. Campbell: Very well, your Honor.

#### RODRICK PERKINS

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

#### Direct Examination

By Mr. Campbell:

Q. Will you state your name, please?

A. Rodrick Perkins.

Q. Where do you live?

A. 1024 Plumas Street, Reno, Nevada.

(Testimony of Rodrick Perkins.)

Q. What is your business or occupation?

A. I am a bookkeeper for the Bank Club.

Q. In Reno, Nevada? A. Yes, sir.

Q. And who are the owners of the Bank Club?

A. Who were?

Q. Who are?

A. The owners of the Bank Club are Bank Club of Reno, a corporation.

Q. And during the years up to and including the end of 1945 who were the owners? [1491]

A. The owners were Mr. Graham, Mr. McKay, and Mr. Sullivan. He was known as Sullivan. His legal name was Scarlett, but he was known as J. B. Sullivan throughout Reno and in the Bank Club.

Q. And he is now deceased, is he not?

A. Yes, sir.

Q. How long have you been bookkeeper for the Bank Club, Mr. Perkins? A. Since 1940.

Q. Now, Mr. Perkins, in the course of your duties as bookkeeper for the Bank Club, did there come to your attention a transaction whereby certain cases of Gallagher & Burton whiskey, which were stored at the Nevada Transfer and Warehouse Company's warehouse, were acquired by the Bank Club? A. Yes, sir.

Q. You were asked to produce the records with relation to that transaction. Have you done so?

A. They are right here.

Q. You have produced what you refer to as an

(Testimony of Rodrick Perkins.)

invoice, a check and certain ledger records with relation thereto, is that correct?

A. That's correct.

Mr. Campbell: I will ask to have document entitled "Invoice" marked 147 for identification. I ask that the check be marked 147A for identification.

Q. With regard to this ledger sheet, will you point out to me, [1492] without a statement of any kind, Mr. Perkins, the items to which reference was made? (Witness indicates.)

A. Here is the check record. The general ledger sheet—it is included in that figure there.

Mr. Campbell: I will ask to have the ledger sheets marked 147B for identification. Do you have copies?

A. I do not have them here. I have them, but don't have them here.

(Short recess taken at 10:55. Jury and alternate jurors admonished.)

11:10 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. PERKINS

resumes the witness stand on further

Direct Examination

By Mr. Campbell:

Mr. Gillen: If the Court please, the defense is willing to stipulate that the three last exhibits offered by counsel may be admitted in evidence and also we are willing to stipulate that the original documents may be supplanted by copies.

The Court: Will counsel accept the stipulation?

Mr. Campbell: Well, I hadn't intended to offer the ledger sheet.

Mr. Gillen: Well, whatever he wants to offer.

The Court: You offer 147A? [1493]

Mr. Campbell: 147 and 147A.

The Court: I understand there is no objection. They will be admitted in evidence.

Mr. Campbell: I will read Exhibit 147. Type-written document headed in typewriter, "Elmer Remmer Cal-Neva Lodge, Crystal Bay, Nevada. License 11757, November 22, 1946. Sold to Bank Club 239 No. Center Street, Reno, Nevada, 900 cases Gallagher & Burton \$33.31—\$29,979. (Now stored at Nevada Transfer Warehouse Company.)" Signed, written signature, "Elmer Remmer." Ex-

(Testimony of Rodrick Perkins.)

hibit 147A is a check account of "Bank Bar, 239 No. Center Street, Reno, Nevada, First National Bank, dated July 30, 1947, pay to the order of Elmer Remmer \$29,979." Signed "Bank Bar by Rodrick Perkins," bearing the pen written endorsement, "Elmer Remmer" and the stamp endorsement of the Bank Club of Reno.

Mr. Avakian: May we inquire whether all of Exhibit 147 was read? Is there a paid designation?

Mr. Campbell: I beg your pardon. There is also on 147 a notation, partially in pen and ink and partially by a date stamp, "Paid July 30-1947 check No. 3813," which is the date and check number as shown on Exhibit 147A.

You may cross-examine.

#### Cross-Examination

By Mr. Gillen:

Q. Mr. Perkins, the document which is 147, plaintiff's exhibit in evidence, is the document that recited the sale of 900 cases of Gallagher & Burton whiskey for the total sum of \$29,979, that [1494] was merely relating the transaction, was it?

A. It is an invoice.

Q. Now, the check, which is plaintiff's exhibit 147A, was issued by you on account of the Bank Club at the time? A. That's right.

Q. Now, the endorsement on the back of 147A indicates that the check, which was made to Elmer Remmer as payee by yourself, as payer, for the Bank Bar, was endorsed by Elmer Remmer?



(Testimony of Rodrick Perkins.)

A. Yes, it was.

Q. And then there is below Elmer Remmer's ink endorsement, your bank stamp endorsement of the Bank Club of Reno, is that correct?

A. That is correct.

Q. And that would indicate that Mr. Remmer endorsed this check and turned it back to the Bank Club, which endorsed it again?

A. The Bank Club cashed the check for Mr. Remmer.

Q. Now, do you personally recall the transaction itself? A. Yes, sir.

Q. It is a fact, is it not, that when the check was issued by you to Mr. Remmer, he endorsed it, turned it back to you, and you cashed it, is that correct? A. Yes.

Q. And it is true, is it not, that you retained out in the sum of 23 thousand odd dollars to cover an indebtedness to the Bank Club from Robert Jeffers? [1495] A. That is correct.

Q. And Robert Jeffers had become obligated to the Bank Club in that amount and Mr. Remmer paid 23 thousand dollars out of this 29 thousand dollar check? A. Yes, sir.

Q. And it had been brought to your attention, had it not, by Mr. Robert Jeffers that Mr. Remmer owed Mr. Jeffers some money and Mr. Remmer would pick up Mr. Jeffer's obligation?

Mr. Campbell: Objected to as hearsay.

The Court: Objection sustained.

Q. Can you relate under what circumstances

(Testimony of Rodrick Perkins.)

Mr. Remmer agreed to pay Mr. Jeffer's obligation, or under what circumstances did you happen to collect Mr. Jeffer's obligation from Mr. Remmer?

Mr. Campbell: Same objection—by indirect sought to be the same answer that could not be obtained by direct.

The Court: Same ruling.

Mr. Gillen: Of course, your Honor, the man handled the transaction. He must have some personal knowledge how he happened to collect one man's obligation from another. Here is the man, who is a witness on the stand, who issued the check and had it endorsed by the payee and then had taken back the check and deducted therefrom the sum of 23 thousand dollars. I have in mind, your Honor, he has some personal knowledge on the matter.

The Court: The ruling will stand. [1496]

Mr. Gillen: I don't know how else to get at it, your Honor. That's all.

Mr. Campbell: That's all.

(Witness excused.)

Mr. Gillen: May I ask this witness—I am sorry—to just resume the stand for a moment?

The Court: Yes.

Q. Mr. Perkins, you were acquainted with the fact that Mr. Robert Jeffers is now dead?

A. Yes, sir.

Mr. Gillen: That's all, thank you.

WILLIAM K. WOODBURN

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination

By Mr. Campbell:

Q. Will you state your name, please?

A. William K. Woodburn.

Q. Where do you reside?

A. 835 Arlington.

Q. In the City of Reno? A. Yes.

Q. What is your business or occupation?

A. Attorney at law.

Q. What is the name of your firm, Mr. Woodburn?

A. At present Woodburn Foreman and Woodburn.

Q. And what was formerly the name of your firm, during particularly [1497] the period 1944 to 1946? A. Thatcher and Woodburn.

Q. Are you acquainted with William Graham and James McKay? A. Yes.

Q. And are you acquainted with the defendant here, Elmer Remmer? A. Yes.

Q. In your capacity as an attorney, have you previously represented each of the three individuals whom I have named?

A. Yes, for many years.

Q. And I will ask you whether or not, in your capacity as an attorney, you also represented the corporation known as Cal-Neva, Inc.?

(Testimony of William K. Woodburn.)

A. That is correct.

Q. As a matter of fact, you or members of your firm incorporated that business?

A. I believe that is correct. That is a matter outside my knowledge.

Q. You, however, did represent Cal-Neva, Inc.?

A. That is correct.

Q. And did you or did you not during the year 1946?

A. Yes.

Q. Now, during the year 1946 were you present at various negotiations relating to the sale of the interests of Graham and McKay in Cal-Neva, Inc., to the defendant, Elmer Remmer?

A. No, sir. [1498]

Q. Did you, in connection with any such transaction, draw any papers?

A. No, sir. I might explain, Mr. Campbell, my law partner, Mr. George B. Thatcher, drew all the papers in connection with the sale of Cal-Neva, Inc., in connection with the sale of the stock.

Q. Mr. George Thatcher is now deceased?

A. He died about three months after this transaction took place.

Q. And with respect to the papers which he drew, was he at that time your partner in the company?

A. That is correct.

Q. And after his death did you yourself personally look after the transactions?

A. Well, there really wasn't anything to look after, Mr. Campbell.

Q. Was there an escrow set up in your office, if you know?

A. Yes.

(Testimony of William K. Woodburn.)

Q. And are you still holding that escrow?

A. Correct.

Q. You were asked to produce here such records as you may have with respect to that escrow, have you done so?      A. Yes, sir.

Q. Will you produce those at this time, Mr. Woodburn?

A. I might say at this time, Mr. Campbell, before I produce these record, that these records were given to me by reason of [1499] my relationship as attorney and client for both Mr. Remmer and McKay and Mr. Graham. I believe Mr. Graham has waived any objection he might have to my so testifying, but as yet I have not received waiver of Mr. Remmer.

Q. Might I ask you one question? I believe you stated in connection with these papers you were acting as an escrow agent for all parties?

A. We represented all parties.

Q. And you are holding the escrow at this time?

A. That is correct.

Mr. Campbell: I submit, your Honor, it is not a matter of confidence.

Mr. Gillen: I am sure Mr. Remmer will waive any privilege.

Mr. Campbell: I do not believe it is a matter of privilege.

Mr. Gillen: Well, if it is.

The Court: It does not seem to be. He is merely an escrow agent.

(Testimony of William K. Woodburn.)

Mr. Gillen: However, we will waive any privilege that might attach.

Q. You have produced a document, Mr. Woodburn, entitled "Memorandum and Receipt."

A. That is correct.

Q. I am going to show you what has already been introduced as plaintiff's Exhibit 144 and ask you if that is a duplicate original [1500] of the document which you hold in your escrow?

A. It would appear to be.

Q. I will ask you whether or not there were any other memoranda or contracts setting forth the purported terms of the transaction?

A. None I know of, Mr. Campbell.

Q. That is the only document which so sets forth?

A. That is correct.

Q. What else are you holding in that escrow?

A. The stock that was issued to Mr. Remmer.

Q. You have in your hand what purports to be stock certificates held by you in the escrow?

A. That is correct.

Mr. Campbell: Possibly we can avoid putting these in evidence.

Mr. Gillen: The defense would have no objection to Mr. Woodburn testifying verbally from these exhibits.

Mr. Campbell: That is what I was going to ask.

Q. You have stated that you hold certain stock certificates in the escrow and you have produced here what purport to be some eleven stock certificates of Cal-Neva, Inc. Mr. Woodburn, do you

(Testimony of William K. Woodburn.)

know that those purport to represent all of the capital stock outstanding of Cal-Neva, Inc.?

A. I believe that is correct, Mr. Campbell.

Q. And in whose name are those stock certificates made? [1501]

A. Well, one for six thousand in Elmer Remmer and ten for 1800 in Elmer Remmer.

Q. And they all stand in the name of Elmer Remmer? A. That is correct.

Q. By whom are they signed?

A. Well, the first one for six thousand is signed by H. O. Hall as secretary and Mr. McKay as president. The others—

Q. What is the date of that certificate?

A. June 30, 1929.

Q. Now, the others are signed by whom?

A. Digressing a moment—1929 was the date Mr. Remmer and Mr. McKay and Mr. Graham and Mr. Hall acquired Cal-Neva. The others are all signed by Rodrick Perkins, assistant secretary, and Elmer Remmer as president.

Q. What date do the 10 certificates of 1800 bear? A. July 10, 1946.

Q. Now, Mr. Woodburn, do you have any written instructions with reference to the escrow as to what disposition is to be made of those certificates?

A. No. Mr. Thatcher's secretary, who is still with the firm, told me that Mr. Thatcher gave her this receipt and the stock and said, "Put this in the safe until I give you further instructions."

Q. And you, yourself, received no instructions with reference to that escrow? [1502]

(Testimony of William K. Woodburn.)

A. None at all.

Q. From anyone?           A. No, sir.

Q. Has money passed through you with relation to that escrow, passed through your hands?

A. Well, not exactly, not with that escrow. Now, when Mr. Remmer subsequently sold Cal-Neva, or sold the assets of the corporation, to its present owners, we did collect some money, some money that was disbursed in our office.

Q. Will you state whether or not that money was collected through your office on account of the 466 thousand dollars?           A. Yes.

Q. As set forth in that receipt and memorandum?           A. If you wish, I can tell you exactly.

Q. Yes, will you do so?

A. There was an original balance due to Mr. McKay and Mr. Graham of \$233,333.33.

Q. That would be one-half of the price set forth in the memorandum?

A. That's right. Now, in 1946 Cal-Neva paid directly to each of them 50 thousand dollars. On March 2, 1949, 50 thousand dollars was paid to Mr. McKay and Mr. Graham through the First National Bank through the Trust Department.

Q. Is that 50 thousand each?

A. That's correct. The Trust Department at the bank was the [1503] escrow agent handling the deal between Mr. Remmer and Mr. Adler, the present owner.

Q. As I take it then, Mr. Woodburn, from a subsequent sale of the property—



(Testimony of William K. Woodburn.)

A. That is correct.

Q. —through an escrow set up for the purpose of effecting that sale and monies were paid by that escrow over to you or directly to Graham and McKay in relation to those transactions?

A. That is correct.

Q. So that, I take it, according to your records of the purchase price of \$466,666.66 there had been paid by the end of 1946 a sum of 100 thousand dollars, is that correct?

A. Not according to my records because that payment didn't go through our office, but I believe I got that information from Mr. Semenza.

Q. And if that information was accurate, there would still be outstanding as of December 31, 1946, from Remmer to Graham and McKay the sum of \$366,666.66?

A. That is correct.

Q. Now, as attorney for Cal-Neva, Inc., do you know who kept the records of that corporation?

A. Well, I think that the manager, Mr. Jeffers, kept some, and my best recollection is Mr. Semenza used to audit their records, but I am not positive of it at all.

Q. Have you ever examined the records of the corporation yourself? [1504]

A. Well, what records, for instance, do you mean, the books?

Q. Yes, the books. Have you even seen them?

A. No.

Q. Do you know in whose custody they were kept?

A. No.

(Testimony of William K. Woodburn.)

Q. Do you know in what city they were kept? That is, maintained, the books themselves?

A. I couldn't tell you.

Mr. Campbell: That's all. You may cross-examine.

Cross-Examination

By Mr. Avakian:

Q. Mr. Woodburn, I believe you stated that following the sale of the Cal-Neva assets by Mr. Remmer to the Adler group, your office disbursed certain funds out of the proceeds of that sale to Mr. Graham and Mr. McKay on behalf of Mr. Remmer?

A. That is right.

Q. Out of the proceeds of that money did you also disburse, on behalf of Mr. Remmer, the sum of 25 thousand dollars to one Mr. Scarlett, also known as Sullivan?

A. That is correct.

Q. Who was Mr. Scarlett?

A. Mr. Scarlett was one of the former partners in the Bank Club.

Q. Partner of Graham and McKay?

A. That is right. [1505]

Q. He was also known as Mr. Sullivan?

A. That is right.

Q. Did you have any records showing when you disbursed that money to Mr. Sullivan on behalf of Mr. Remmer?

A. I do not have any direct record of it. I do know it was some time after the sale by Mr. Remmer to Mr. Adler.

(Testimony of William K. Woodburn.)

Q. And that sale was in 1949?

A. Well, the escrow was set up, I believe, in January, 1949.

Q. Was that in the amount of 25 thousand dollars? A. That is right.

Q. Did that represent a repayment to Mr. Scarlett of that sum, in repayment of loan from Mr. Scarlett to Mr. Remmer at some earlier date?

A. That's right.

Mr. Campbell: If he knows.

The Court: Do you know?

A. Yes, I know. I know Mr. Sullivan was very, very happy to get the money.

Q. Do you know whether Mr. Sullivan had loaned that money to Mr. Remmer prior to December 31, 1946? A. No, I do not.

Redirect Examination

By Mr. Campbell:

Q. In that connection, Mr. Woodburn—incidentally, what was the sale price of Cal-Neva to Mr. Adler?

A. I couldn't tell you offhand. [1516]

Q. Do you recall it was the sum of 800 thousand dollars?

A. I didn't handle that deal, Mr. Campbell. I believe either my father or John Thatcher handled it.

Q. Now, with regard to this 25 thousand dollars that was paid to Mr. Scarlett, sometimes known as Mr. Sullivan, he had, had he not, prior to his death,

(Testimony of William K. Woodburn.)

been a partner in the Bank Club with Mr. Graham and Mr. McKay?      A. That's right.

Q. Did you see any note in connection with that transaction?      A. No.

Q. Do you know yourself when the loan was made?      A. No.

Q. If it was a loan?

A. No. I remember Mr. Sullivan saying to both my father and myself that Remmer owed him 25 thousand dollars.

Q. Now, do you know whether or not the 25 thousand dollars referred to had been money borrowed by Mr. Remmer, or borrowed by someone else whose obligation Mr. Remmer had guaranteed?

A. I do not have any knowledge.

Q. I think you stated you did not know the date of the obligation?      A. That is correct.

Q. Were you holding any security, either by note or any other form, in respect to the 25 thousand dollars?

A. I don't recall, Mr. Campbell, I don't think we did, though. [1507] I know I asked my father about that and he couldn't recall whether we had a note or not.

Mr. Campbell: I think that is all.

#### Recross-Examination

By Mr. Avakian:

Q. You said Mr. Sullivan told both you and your father that Mr. Remmer owed him 25 thousand dollars?      A. That is right.

(Testimony of William K. Woodburn.)

Q. Did he tell you that on more than one occasion?

A. Oh, yes, he was rather concerned about it and when this sale by Mr. Remmer to Mr. Adler came up, he asked us to be sure and see he was looked after.

Q. Do you recall the date of any occasions on which he told you Mr. Remmer owned that money?

A. Well, it would be subsequent to the sale.

Q. In other words, the sale had been set up and he wanted to make sure that you collected it for him?

A. That's right.

Mr. Avakian: That is all.

(Witness excused.)

**MR. PERKINS**

recalled on further

**Direct Examination**

By Mr. Campbell:

Q. Mr. Perkins, you were acquainted, were you not, with Mr. Scarlett, known as Mr. Sullivan?

A. Yes, sir.

Q. He was one of the partners of the Bank [1508] Club?

A. Yes, sir.

Q. Do you recall an occasion upon which you handled a loan for Mr. Sullivan when Mr. Remmer was present?

A. No, sir.

Q. Mr. Perkins, do you recall an occasion when you handled money with respect to a loan made by Mr. Sullivan?

(Testimony of Rodrick Perkins.)

Mr. Gillen: Objected to as asked and answered, leading and suggestive.

The Court: Objection overruled. Answer the question.

(Question read.)

A. That is a pretty broad question.

Q. Well——

A. We handle a lot of money down there over many periods of years.

Q. Did you at any time, in behalf of Mr. Sullivan, or Mr. Scarlett, handle a loan transaction from Mr. Sullivan to one O'Brien in San Francisco?

A. I do not recall. Mr. Sullivan handled most of the loans himself of that nature.

Q. Referring to this 25 thousand dollar repayment made to Mr. Scarlett, do you have any knowledge of the original transaction?

A. No, I heard that——

Q. No, not hearsay—but you yourself?

A. I don't have any direct knowledge, no sir.

Q. Did you keep any books or records for Mr. Sullivan? [1509]

A. I occasionally kept track of his interest receipts from bonds and dividend payments, occasionally.

Q. But other than that, did you keep any records for him?      A. No, sir.

Mr. Campbell: I think that is all.

The Court: Any further questions, gentlemen?

Mr. Gillen: No further questions.

(Witness excused.)

(Jury and alternate jurors admonished and noon recess taken at 11:45 a.m.)

January 2, 1952—1:00 p.m.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

**ALBERT FREDERICK FRITCHETT**

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

**Direct Examination**

By Mr. Campbell:

Q. Will you state your name, please?

A. Albert Frederick Fritchett.

Q. Where do you reside?

A. Ambassador Hotel, San Francisco, California.

Q. What is your business or occupation?

A. At the present time I am unemployed.

Q. What was your former business or occupation?

A. I worked for Mr. Remmer, also worked at the race tracks. [1510]

Q. Over what period of time did you work for Mr. Remmer?

A. From 1941 to 1945 and a few days in 1946.

(Testimony of Albert Frederick Fritchett.)

Q. With what business or businesses of Mr. Remmer were you connected during that period of time?

A. B & R Smoke Shoppe.

Q. That was located at 50 Mason Street in the City of San Francisco?

A. That is correct.

Q. And during that period was that your sole employment?

A. Yes, sir.

Q. Will you state the basis upon which you were employed, that is to say, by salary, commission or in what manner?

A. By salary.

Q. And what was that salary?

A. It varied. I think I started in around sixty a week and at the end I was getting a hundred.

Q. Now, for a portion of that period of time were you in charge of the business of the B & R Smoke Shoppe?

A. I kept the financial end of it.

Q. Did you manage the financial end of it?

A. Yes, sir.

Q. What period of time was that?

A. During 1945.

Q. Was that after William Kyne went into the service?

A. Yes, sir. [1511]

Q. Did you continue in that capacity until Mr. Kyne returned from the service?

A. No, sir.

Q. Do you recall approximately when it was that you left in 1946?

A. I left about the end of '45 and I was back there for a few days the end of March or middle of March.

Q. How long did you remain at that time?



(Testimony of Albert Frederick Fritchett.)

A. Oh, about a week.

Q. When you left in March, was the business still operating?      A. No, sir.

Q. And that was March of '46?

A. That's correct.

Q. And will you state whether or not up until the first time you left at the end of 1945 the business operated continuously?

A. No, sir. It was a few months in 1945.

Q. Do you recall what months those were?

A. No, I do not. It was the end of '45.

Q. Was that at a period when the race tracks were closed down?      A. Yes, sir.

Q. But aside from that, during the time that the race tracks operated from 1941 to the end of 1945, was the business continuously in operation?

A. Yes, sir.

Q. Now, prior to the time of Mr Kyne's entry into the service, [1512] what was the nature of the duties that you performed for the B & R Smoke Shoppe?

A. I used to figure the winning books.

Q. By figuring the winning books, do you refer to the figuring out the amount that should be paid to the holder of a ticket?      A. Yes, sir.

Q. During that period of time, did you, yourself, handle the cash which came in?

A. I used to have to balance the room at the end of the day and I used to put the bank roll in in the morning.

Q. When you say you helped to balance the

(Testimony of Albert Frederick Fritchett.)

cash count at the end of the day, do you refer to the operation of amount of cash on hand as checked against the wagers, less the pay-outs? A. Yes.

Q. Did those pay-outs include running expenses, as well as payment of wages?

A. Now what I used to do.

Q. You had nothing to do with that at that time? A. No, sir.

Q. Now, what did you have to do with the bank roll in the morning?

A. I used to go down to the bank and get the sack with the money in it for the cashier.

Q. Who was the cashier at that time?

A. Well, we had a couple of them at different times. Employees, [1513] one of them might be a ticket man and he would probably move up to cashier. Sometimes I would do the cashing also.

Q. By cashier, you refer to other employees who took in and paid out the money during the course of the day, is that correct?

A. Yes, sir.

Q. For example, when a person would place a bet, I take it it would be written out and money paid to the cashier or to the ticket rather?

A. That is right.

Q. Who, in turn, would turn it over to the cashier, is that correct? A. That is right.

Q. And I take it on each race, as the results and odds became known, it would be figured on the

(Testimony of Albert Frederick Fritchett.)

winning ticket, the amount to be paid, is that correct?      A. That is correct.

Q. And the cashier would then make such return as the fortunate winners called for?

A. That is correct.

Q. When you got the money at the beginning of the day—that is during the period when Mr. Kyne was still there—from what source did you receive it, what bank?

A. The sack would be made up at the end of the day with the bank roll and it used to be around five hundred and a couple of [1514] hundred or so in small bills.

Q. What bank was that kept in?

A. Day and Night Branch of the Bank of America, 1 Powell Street.

Q. Was it kept there in safety deposit boxes or banking account?      A. In a deposit box.

Q. Do you recall the number of that safety deposit box?      A. No, I don't.

Q. In whose name was that safety deposit box?

A. Myself and Willie Kyne.

Mr. Campbell: I would like to have these two photostats marked for identification, 148 for identification.

Q. I show you Exhibit 148 for identification, consisting of photostatic copies of two cards, and I draw your attention to the signatures appearing on those photostatic copies, and ask you if you recognize those?

(Testimony of Albert Frederick Fritchett.)

A. Yes, sir, that is my signature and Mr. Kyne's.

Q. Now, I will ask you to examine that and state whether or not that refreshes your recollection as to the number of the safety deposit box to which you had access? A. Yes, 39813.

Q. And I will ask you whether or not that refreshes your recollection as to when that box was opened? I draw your attention—— [1515]

A. February 24, 1943.

Mr. Campbell: This will be offered in evidence as Exhibit 148.

The Court: 148 admitted in evidence.

Q. Now, during the period of time that you were employed there and prior to the entry of Mr. Kyne into the armed forces, did you maintain or were you an authorized signator on any bank account with reference to the operation of the B & R Smoke Shoppe? A. No, sir.

Q. Now, after Mr. Kyne entered the services and after you took over the running of the financial affairs, as you have stated, was a bank account opened in connection with the B & R Smoke Shoppe, of which you were an authorized signator?

A. Yes, sir.

Q. I show you plaintiff's Exhibit 24 in evidence, bank account in the name of E. F. Remmer or A. F. Fritchett, and drawing your attention specifically to the signature card, and also to the ledger sheets and ask you if that is the bank account to which you refer? A. Yes, sir.

(Testimony of Albert Frederick Fritchett.)

Q. And during the period of time that this bank account was operated, will you state who made the deposits? A. I used to.

Q. And will you state the source of the money which was [1516] deposited into this account?

A. I would take it from money that I had on hand.

Q. At the B & R Smoke Shoppe?

A. Yes, sir.

Q. Were you given any instructions by anyone as to what money should be placed in that account, what amount? A. None at all.

Q. Now, with regard to any checks drawn on this account, who drew those checks? A. I did.

Q. Do you know whether or not Mr. Remmer drew any of the checks?

A. I believe he did, yes, sir.

Q. Did you at any time keep any of your personal funds in this account? A. No, sir.

Q. Do you know of your own knowledge whether or not Mr. Remmer deposited any monies in this account other than monies arising from the B & R Smoke Shoppe?

A. I don't remember. I don't believe so.

Q. What is your answer?

A. I do not remember.

Q. Now, in addition to the box at 1 Powell Street, the Day and Night Branch of the Bank of America, during the time that you were in charge of the B & R Smoke Shoppe, did you also have access [1517] to any other lock box?

A. To the safe at 52 Mason Street.

(Testimony of Albert Frederick Fritchett.)

Q. Will you state whether or not there was assigned to you in that safe at 52 Mason Street a box? A. Yes, sir.

Q. Was that a lock box? A. Yes, sir.

Q. How was it opened, that is to say, by key or combination or both? A. By key.

Q. Who, if you know, in addition to yourself, had a key to that box? A. I had both.

Q. You had the only two keys?

A. Yes, sir.

Q. For what purpose was that box used?

A. To keep my cash in from the business.

Q. Over what period of time would a particular deposit be kept in there, that is to say, at the close of the day's business, when you were putting money in, how long would that money remain there, as a matter of practice?

A. It would be there all the time different amounts, and it was mostly in checks.

Q. When you say checks, you are referring to checks of customers? [1518] A. That's right.

Q. How would they subsequently be cashed?

A. I used to give them to Mr. Maundrell.

Q. During the next business day, is that correct? A. That's right.

Q. Cash that was taken during the day's business, what was done with that?

A. Put that in the box.

Q. Was that subsequently deposited in the bank? A. No, it was kept in the box.

(Testimony of Albert Frederick Fritchett.)

Q. So that money deposited in the bank just represented checks, is that correct?

A. When I needed more money, I would put cash in.

Q. Then, do I understand your testimony to be that this bank account only carried whatever funds you needed to draw against, is that correct?

A. That account was opened *with* Mr. Kyne went into the army. There was no business in the place. That was opened and I was put in charge of it in order to pay the rent, phone bills, and the utilities.

Q. And you would deposit sufficient money in this account to cover those items, is that correct?

A. That is right.

Q. But so far as any other money coming in, the checks would [1519] be given to Mr. Maundrell and the cash retained in the safe, is that correct?

A. Yes, sir.

Q. Will you state whether or not from time to time the money that was retained in the safe at 52 Mason Street, if you turned that over to anyone or passed that over to anyone?

A. No, sir.

Q. During the period of your employment there were there any accounting times, any accounting period?

A. No.

Q. So far as you know?

A. No.

Q. Now, during the period of time in 1945 when you took charge and this bank account was opened—appears to be, according to this exhibit, February 17, 1945, referring to plaintiff's Exhibit 24—did you maintain any books or records of account

(Testimony of Albert Frederick Fritchett.)

showing the amount of money received and paid out in connection with the B & R Smoke Shoppe?

A. Yes, sir.

Q. And were those daily records?

A. Daily records, yes, sir, then they would go into monthly records.

Q. And in what form were they kept?

A. Just on sheets of paper.

Q. Individual sheets of paper for each day, is that correct? [1520]

A. Yes, sir.

Q. And you say the monthly records, what form was that, also sheet of paper?

A. Just one sheet of paper.

Q. What would be done with the daily record at the time you made the monthly record?

A. They would be destroyed.

Q. Now, so far as monthly record which was taken from your daily records, what was done with them?

A. I kept them in my desk.

Q. Where? A. 52 Mason Street.

Q. When was the last time you saw that record?

A. December, 1945.

Q. At the time you left? A. Yes, sir.

Q. And you have not seen that since that time?

A. No, sir.

Q. I show you Exhibit 111B, which is labeled "Standard Daily Journal 1945," and which was previously identified with Mr. Kyne, who made but one entry in this book, and ask you if you recognize this as one of the books maintained by the B & R Smoke Shoppe?



(Testimony of Albert Frederick Fritchett.)

Mr. Gillen: By him.

Mr. Campbell: I will ask him first if he recognizes it. [1521]

A. I never saw this before.

Q. During the period of time that you were in charge there, did you keep a record in any similar volume to this?

A. No, sir.

Q. Calling your attention to plaintiff's Exhibit 111A, which is marked on the outside, "Daily Reminder 1943," I will ask you if you ever saw that record before?

Mr. Gillen: We offer the objection as asked and answered. This witness described during the period he was in charge how he kept his accounts. These are accounts of Mr. Kyne, as I recall; also this is year 1943, which is prior to the starting point in the indictment.

The Court: Objection will be overruled.

A. I may have seen this before.

Q. Now, during the time you were in charge did you keep any record in a book similar to this?

A. No, sir.

Q. Or did you keep any record of entries of a similar nature to entries shown in this book?

A. No, just on the sheets of paper.

Q. Now, with respect to the records which you kept, you say daily and then on monthly recapitulations, at which time you stated you destroyed the daily sheets, were any formal books kept, do you know?

A. Not by me. [1522]

Mr. Gillen: Just a moment. I offer the objection it has been asked and answered, how he kept

(Testimony of Albert Frederick Fritchett.)

his records. This "formal" books, of course, is characterization by counsel, but I do not think it is proper characterization. This is his witness on direct examination.

(Question read.)

The Court: You may answer the question.

A. No.

Q. Now, with respect to the checks which you delivered to Mr.—

Mr. Gillen (Interrupting): Pardon me, I am going to ask leave of the Court to strike out the word "formal" in connection with books. That is merely characterization of counsel. A book can be just a volume in a covering and accurately kept, or on a piece of paper. I think the word "formal" of his own witness is improper characterization and should be stricken.

The Court: Motion denied.

Q. Now, with regard to the checks which you say you delivered to Mr. Maundrell, did you keep any record of those checks? A. No, sir.

Q. Did you keep any record in any form as to those checks? A. No, sir.

Q. With regard to the cash which was kept in the safe, did you keep any record of any count from day to day or month to month as to the amount of cash on hand? [1523]

A. Well, I kept the sheet and the cash would balance with what was either won or lost and what was there.

(Testimony of Albert Frederick Fritchett.)

Q. Was that carried on to the monthly sheets at the time you destroyed the daily sheets?

A. Yes, sir.

Q. Now, at the time you left the business at the end of 1945, do you recall the amount of cash on hand?

A. No, I do not.

Q. What is your best recollection?

A. I think it was around five thousand dollars cash.

Q. Do you recall whether or not there were also on hand at that time any accounts receivable?

A. Yes, sir.

Q. What was the amount?

Mr. Gillen: I think the records would be the best evidence of what those amounts were. No foundation laid to show that those were not available to the prosecution.

Mr. Campbell: He stated the last time he saw the records.

The Court: Objection overruled.

A. I don't recall what it was?

Q. What is your best recollection?

A. I believe around 15 thousand outstanding.

Q. At the time you left there at the end of 1945, were there, to your knowledge, any outstanding obligation? [1524]

A. You mean money that the place owed?

Q. Yes. A. None.

Q. Now, calling your attention again to the bank account which you recognized of the B & R Smoke Shoppe, plaintiff's Exhibit 24, and the signature card on which I believe you identified the signature

(Testimony of Albert Frederick Fritchett.)

of Mr. Elmer F. Remmer? A. Yes, sir.

Q. I call your attention to the information set forth on the card, "business liquor warehouse 52 Mason Street, joint business, parts introduction W. E. Kyne, address A. F. Fritchett, 56 Mason Stree, San Francisco," to what firm is the reference, if you know, about liquor warehouse, 52 Mason Street.

A. That is where the liquor was stored, 52 Mason Street.

Q. As I understand your testimony, the premises of the B & R Smoke Shoppe were at 50 Mason Street, is that correct? A. Yes.

Q. 52 Mason, I take it were adjoining premises?

A. Yes.

Q. What liquor was stored there?

A. I had nothing to do with the liquor, but there was a lot of liquor in there, cases, stored.

Q. You say you had nothing to do with that operation? A. No.

Q. Over what period of time did you observe that liquor stored [1525] there?

A. I think when I first went in, around 1943.

Q. Was the liquor still stored there when you left at the end of 1945?

A. Yes, sir, there was some there.

Q. Did you observe at any time the quantity or amount of liquor stored there?

A. Several hundred cases.

Q. Did you at any time participate in an inventory of that liquor?

(Testimony of Albert Frederick Fritchett.)

A. I helped Mr. Kyne take inventory at the time.

Q. Do you recall on what dates?

A. No, sir.

Q. Prior to Mr. Kyne's going to the service or after his return?

A. No, before he went into the service.

Q. Did you at any time during 1944 assist in taking an inventory of that liquor?

A. It is possible I did.

Q. What is your best recollection?

A. I couldn't say.

Q. Do you recall at that time the quantity of liquor which was stored there at the time of the last inventory that you took?

A. No, sir. [1526]

Q. Now, I observe, with regard to this signature card, that the address is listed A. F. Fritchett, 56 Mason Street, San Francisco?

A. Yes, sir.

Q. What was located on 56 Mason Street premises?

A. 56 Mason Street is the Crystal Hotel, which is immediately over 50 and 52.

Q. Did you reside at 56 Mason Street?

A. Yes, sir.

Q. I call your attention further to the signature card after the notation "business" in typing appears, "Liquor warehouse, 52 Mason Street, joint business partners." Will you state to what that refers?

(Testimony of Albert Frederick Fritchett.)

A. That is the first time I ever knew I was a partner to this minutes.

Q. Now, Mr. Fritchett, did you at any time assist in preparing a 1945 partnership return for the B & R Smoke Shoppe? A. No, sir.

Q. Did you have anything to do with any return that was put in? A. No, sir.

Q. Do you know whether or not a 1945 partnership return for the B & R Smoke Shoppe was prepared? A. I do not.

Q. Now, there has been some testimony here regarding the [1527] acceptance of lay-off bets from others in the bookmaking business. Did you have anything to do with that end of the business?

A. No, sir.

Q. During the period of time that you were managing the B & R Smoke Shoppe was any such business conducted? A. Yes.

Q. And did you handle it during that period of time?

A. Just mailing away of the checks, cashing of the checks and the receipt.

Q. Who handled that business during the time that you were manager?

A. Mr. Lando and Mr. Remmer.

Q. Now with regard to those bets, do you know whether they were carried by the B & R Smoke Shoppe or if they were passed on to others?

A. I do not know.

Q. During the course of your employment, did it ever come to your attention any instances in

(Testimony of Albert Frederick Fritchett.)

which bets were received from other bookmakers and passed on to third persons?

A. Well, I knew they used to do that.

Q. To whom were they passed on?

A. Oh——

Mr. Gillen: Just a moment. I think we are getting to a matter upon which your Honor has passed upon at an earlier [1528] witness. We offer the objection it is incompetent, irrelevant and immaterial and offer the further objection that your Honor has already indicated by rulings the immateriality of persons to whom bets were passed.

The Court: I don't see that the answer to that question would be material. If you want to argue the matter, I would like to hear from you.

Mr. Campbell: I think it is material, your Honor.

The Court: We will excuse the jury then.

(Jury and alternate jurors admonished and excused at 1:40 p.m.)

(In the absence of the jury.)

Mr. Gillen: We will locate the transcript in which similar rulings have been made.

The Court: I have in mind that ruling to which you refer.

Mr. Campbell: If the Court please, I think it is material to the matter of profits derived from the B & R Smoke Shoppe as to the amount of business which consisted of what counsel has referred to as so-called courtesy bets, compared to business which

(Testimony of Albert Frederick Fritchett.)

was accepted as a regular business. Now, for example, the first page here of Exhibit 116F relating to 1943, that, as an example, shows that during 1943 there were purchased nearly half a million dollars of cashier's checks, which were largely sent to other bookmakers, without designating the names—the names are denominated here, but the [1529] testimony of Mr. Kyne was that with the exception of those made to the Collector of Internal Revenue and I think two or three others he pointed out, the rest were made to those in the bookmaking business. Now I think it is material to ascertain as far as possible how much of that 428 thousand dollars, for example, shown in those cashier checks represented business of the B & R Smoke Shoppe which they were handling as a part of their business, as compared to what has been termed courtesy handling, and that is the purpose of this question.

The Court: I think this covers the same situation we had quite a while ago. I do not believe it would be proper to allow the names of notorious people to go to the jury unless it was impossible to get the evidence before the jury without disclosing these names.

Mr. Campbell: Well, of course—pardon me—

The Court: You see the thought I have.

Mr. Campbell: Yes, I do, your Honor.

The Court: That these names are names of such characters as might possibly—although I doubt it would prejudice the members of this jury—but I



(Testimony of Albert Frederick Fritchett.)

think the Court should guard against any possibility of that kind.

Mr. Campbell: I think that was counsel's characterization rather than my characterization.

The Court: I think we can safely say that he came pretty [1530]

Mr. Campbell: Yes, I think that is true. However, of course, these individuals were business associates——

The Court: Can we get this evidence that you desire before this jury without disclosing these names to the jury?

Mr. Campbell: Well, I can attempt to have him identify on here by mark of some kind, I presume, yes, which represented so-called courtesy bets which he knew about.

The Court: If it was impossible to achieve your point here without disclosing these names, that would be another thing, but if you can do it without disclosing these names to the jury, I think in the interest of justice we should try to avoid disclosing these names.

Mr. Campbell: I will attempt to approach it from that method.

The Court: That is what you have in mind, Mr. Gillen?

Mr. Gillen: Yes, and further, may it please the Court—of course, here we have a witness whom it becomes obvious to us, by reason of what we know from other testimony, was only in charge in the absence of Mr. Kyne for a period of perhaps seven

(Testimony of Albert Frederick Fritchett.)

months. In 1945, the first five months there were no races at all, so for a period of about seven months. Now he testified he had nothing to do with that end of the business except he sent off the checks and I doubt that particular [1531] information could be obtained by this witness. Furthermore, this whole field was probed by counsel with Mr. Lando and Mr. Kyne, as your Honor will recall, particularly with Mr. Kyne. Mr. Kyne gave a very comprehensive description of how matters were handled, and it was explained how they were handled and what were courtesy and why courtesies were extended, so I think that it is here in the record, if your Honor cares to glance at it.

The Court: Well, go along and see what the questions of this witness develops, but I am interested in this matter that we discussed here. I do not see any reason why names should go before the jury of people the mention of whose names might possibly be prejudicial to the defendant. I do not see any reason why those names should go before the jury. Of course, if this—if this evidence which you desire to introduce here, if it is admissible otherwise and can't be shown without disclosing names, we just can't help that. That is all.

Mr. Campbell: I will proceed along that line, your Honor.

The Court: Very well. We will call in the jury.

(Jury returned into court at 1:50.)

**MR. FRITCHETT**

resumes the stand on further

**Direct Examination**

**By Mr. Campbell:**

**Q.** Now, Mr. Fritchett, directing your attention to plaintiff's [1532] Exhibit 116, which purports to be a summary of cashier's checks purchased through the Bank of America, Day and Night Branch, I will ask you first to examine this list—

**Mr. Gillen:** I wonder if we might have counsel show it to us. It is my recollection Mr. Kyne said they were checks he had purchased.

**The Court:** Yes.

**Mr. Campbell:** Some were purchased by him.

**Mr. Gillen:** I just want to see. I would like your Honor to look at the exhibit. There is no 1945 in this list.

**The Court:** The exhibit has been admitted in evidence.

**Mr. Gillen:** That is true, but this witness, if I followed the testimony, and I have taken careful notes, is being questioned now as to what he did in 1945 in connection with purchase of cashier's checks. There are no 1945 checks reflected here.

**Mr. Campbell:** I have not propounded the question yet.

**Mr. Gillen:** Let us hear the question before the jury was excused. The question was as to what date did Mr. Pritchett in 1945, when he was—

(Testimony of Albert Frederick Fritchett.)

Mr. Campbell: I am about to ask another question at this time.

The Court: Yes, proceed.

Q. I am going to show you plaintiff's Exhibit 116, which purports to set forth cashier's checks purchased through the Day and Night Branch of the Bank of America, on the dates indicated, purchased [1533] by the persons whose names are indicated, payable to the payees as indicated and the amounts as indicated, and ask you if you will examine this list and state whether or not, from your association with the business, for the date of your employment in the business, if you are able to distinguish the money which was handled by those checks simply as courtesy and not as regular business of the B & R Smoke Shoppe?

Mr. Gillen: I offer the further objection it should be confined to the period involved in the indictment. Anything before 1944 would be incompetent, irrelevant and immaterial and if it is subsequent to the time that Mr. Fritchett left the place of employment would be incompetent, irrelevant and immaterial, calling for his opinion and conclusion.

The Court: Well, I take it that—if he can answer the question he may do so, because it would indicate to me his answer is from knowledge he gained during the course of his employment.

Mr. Campbell: This calls for yes or no answer.

Mr. Gillen: Prior to 1944 would not be material.

The Court: How about the starting point? I

(Testimony of Albert Frederick Fritchett.)

have heard something about a starting point.

Mr. Gillen: The starting point is 1944. The first day of the year 1944, and the finishing point of the indictment is the last day of the year 1946.

The Court: Objection overruled. [1534]

A. I don't know.

The Court: Do we have stipulation of counsel that the jury and alternate jurors were present at all times?

All Counsel: So stipulated.

Q. Mr. Fritchett, do you recognize the names of the payees as set forth here? That should be answered yes or not.

Mr. Gillen: I offer the objection we are not concerned with matters that occurred before the time of the indictment. We are called upon to face charges set forth in the indictment, as your Honor has stated, and that is all. Now this is an exhibit, I forget how many years it goes back, back to '42 or '43, and as to those matters, we offer the objection it is incompetent, irrelevant and immaterial and outside the realm of this case, the boundary of the indictment.

The Court: Objection overruled. Answer the question.

A. Yes, I recognize it.

Q. Now, do you know, Mr. Fritchett, during the time of your employment, cashier's checks were being received from these persons whose names are listed here as payees?

(Testimony of Albert Frederick Fritchett.)

A. I can only answer for 1945, because previous to that I had nothing to do with that.

Q. You knew nothing about that prior to 1945?

A. No, sir.

Q. During 1945, what was the situation?

A. We received checks, yes, sir.

Q. Who would receive those? [1535]

A. I would.

Q. What would you do with them?

A. Give them to Mr. Maundrell.

Q. Did you keep any record of those checks?

A. No, sir.

Q. Did you have any record at this time, or did you maintain any record as to what that money represented by way of payments or otherwise?

A. No, sir.

Q. During the period of time that you were in charge there, how often would cashier's checks be received?

Mr. Gillen: That is in 1945?

Mr. Campbell: When he was in charge.

A. Well, due to the condition of the business.

Q. Well, was it a daily matter of what?

A. Well, some of them would be a week, some by a few days, some probably about 2 weeks.

Q. You say some would be by a few days or week or month, are you referring to different individuals?

A. Well, the same account would carry on sometimes until it got to be five thousand dollars or so.

Q. And then there would be a cashier's check paid out or received, is that correct?

(Testimony of Albert Frederick Fritchett.)

A. That is correct. [1536]

Q. Who kept the record of those accounts?

A. I did.

Q. And was that a part of your daily and monthly recapitulation? A. Yes.

Q. Well, then, did I understand you—or possibly we are talking at cross purposes here—you stated that you kept no record of the bank and cashier's checks?

A. I kept records of the amount of money that was owed.

Q. And when you referred to the 15 thousand dollars accounts receivable at the end of 1945, are you referring to such accounts represented by payments from time to time by cashier's checks?

A. They could be money that was owed, that was delinquent.

Q. Now, do you recall at this time what the volume of the business was during the period of time that you were manager and handling these affairs as to amounts received from out-of-town bookmakers and amounts paid out to out-of-town bookmakers?

A. No, it would show in the records with the checks that I bought and sent away.

Q. Now, as to the incoming checks, do you know where they were deposited and in what account?

A. No, sir.

Q. You simply turned them over to Mr. Maundrell? A. That's right. [1537]

Mr. Campbell: You may cross-examine.

(Testimony of Albert Frederick Fritchett.)

Cross-Examination

By Mr. Gillen:

Q. Mr. Fritchett, in the year 1945, Mr. Kyne went into the service on February 14th, if I recall his testimony, is that about your recollection of it?

A. It was in February, I don't remember the date.

Q. And for the first five months of 1945, there were no races? A. That's correct.

Q. So that, as a matter of fact, you were in charge of this business yourself only for a period of about seven months, is that correct?

A. That's right.

Q. And this 15 thousand dollars that you mentioned here as accounts receivable, I take it that that included markers or IOU's, is that correct?

A. That is right.

Q. And when you left the business in December of 1945, Mr. Slater was the auditor or accountant who took care of the books and so on. Did you turn over your accounts to him?

A. I don't recall; I believe I did.

Q. Then as I understand, during the year 1946, you just went back to work there for about a week?

A. Correct.

Q. Do you recall what time of year that was?

A. About the middle of March. [1538]

Q. About a week and then you left the place again? A. That's right.

Q. Mr. Fritchett, during the period of time that



(Testimony of Albert Frederick Fritchett.)

you were in charge in the B & R Smoke Shoppe in the year 1945, there having been no racing for the first five months, there was no business for that period of time, was there?      A. No.

Q. And is it your recollection that the B & R Smoke Shoppe for that year operated at a loss?

A. I believe it did.

Q. Mr. Fritchett, calling your attention to prosecution's Exhibit 148, you will recall that this is the signature card and application for opening of safe deposit box, and this refers to the box that was opened in the name of William Kyne and A. F. Fritchett, Box No. 39813, Day and Night Branch of the Bank of America, who was it that opened this box, you or Mr. Kyne, do you recall?

A. You mean took out the box?

Q. Gave the information and took out the box, do you know?

A. I think we were both there together.

Q. Were you ever a partner in the B & R Smoke Shoppe?      A. No, sir.

Q. Were you ever a partner in any liquor warehouse at 52 Mason Street?

A. I was strictly salary. [1539]

Q. And that salary, you say, commenced when you first went to work in 1941, around sixty dollars?

A. That is right.

Q. And ultimately you were raised up to one hundred a week?      A. Yes, sir.

Q. Did you ever see any of the B & R partnership income tax returns?      A. No, sir.

(Testimony of Albert Frederick Fritchett.)

Q. So far as you know, you were never shown, as a partner, anything of those returns, is that correct? A. No, sir.

Q. Mr. Fritchett, with the permission of the Court, I will show you these prosecution's Exhibits 77, 78, and 79, which are the partnership returns for the B & R Smoke Shoppe partnership for the years 1943, 1944 and 1946, and if you look on the reverse side, which is called Schedule I, you will see set forth there the members of the partnership. I will ask you if your name appears on that schedule?

Mr. Campbell: If counsel so states, I will stipulate it does not appear. The witness says he has never seen it before.

The Court: The witness may answer.

A. I don't see it.

Q. There are three partners mentioned in that schedule, Mr. Remmer, Mr. Kyne, and Mr. Lando, is that correct? A. That is correct. [1540]

Q. Now, those daily accounts that you kept on separate sheets of paper and then recapitulated them into a monthly account at the end of each month, are those the records that you believe you turned over to Mr. Slater when you left in December, 1945?

A. The monthly accounts up to the 12 months of the year.

Q. The daily accounts you destroyed at the end of each month when you made up the monthly account?

(Testimony of Albert Frederick Fritchett.)

A. They had names on them and they were destroyed.

Q. And to the best of your knowledge and recollection at this time did your daily sheets reflect truly the business that was done by the B & R Smoke Shoppe and did the monthly accounts truly reflect a recapitulation of the daily accounts?

Mr. Campbell: Objected to, the books are the best evidence. The witness has testified he is not familiar with certain of the aspects of the business.

The Court: He may answer the question.

A. To the best of my knowledge, they were true and correct.

Mr. Gillen: That's all.

#### Redirect Examination

By Mr. Campbell:

Q. Counsel asked you whether or not the 1945 operation of the B & R Smoke Shoppe was at a profit or loss, and you stated you believed it to be operated at a loss. Do you know that to be a fact?

A. No, I don't. [1541]

Q. Do you know what the records show as to whether it was a profit or loss?

A. My records show a profit but if the delinquent accounts were not collected, it would show a loss.

Q. Now, you referred to the fact as to destruction of the daily sheets and you said they had names on them and were destroyed; to what do you refer?

A. Each daily sheet, like Joe Brusso a thousand,

(Testimony of Albert Frederick Fritchett.)  
and Charlie Jones, five hundred; I kept them for a while and then I was told to destroy them and destroy the evidence of the names.

Q. Who gave you those instructions?

A. Mr. Remmer.

Q. When you then destroyed those and set up your monthly sheet, your monthly sheet did not reflect who owed you and whom you owed money to by name?

A. The monthly sheet I refer to would be just how much was won or lost for the month.

Q. And wouldn't show who owed you or who you owed money to?

A. No, that would be carried on the daily sheet.

Q. The sheet after you destroyed it?

A. Yes, after it was all paid off, that would be destroyed.

Q. So no permanent records were ever kept to show who you owed money to at any given time—

Mr. Gillen: Objected to as assuming something already in evidence. He already testified to 15 thousand dollars in markers. [1542] Certainly they were kept. Leading and suggestive and not proper redirect.

The Court: Read the question.

(Question read.)

Q. No permanent records were kept showing from day to day who owed you money and who you owed money to?

Mr. Gillen: Objected to as leading and sugges-

(Testimony of Albert Frederick Fritchett.)

tive and not proper redirect examination. It has been asked and answered and explained.

The Court: Objection overruled. Answer the question.

(Question read.)

Mr. Gillen: I object to the word "permanent." It is characterization of counsel.

The Court: He may answer the question.

A. After the money was paid I didn't see any reason to keep any.

Q. Did you keep any? A. No.

Q. Those were the sheets that were destroyed, is that correct? A. Yes.

Mr. Gillen: Objected to as leading and suggestive, asked and answered. This is his witness. He is cross-examining his own witness. He stated he kept a daily record and at the end of the month made a recapitulation and when he left there, there were 15 thousand dollars markers.

The Court: You may answer the question. [1543]

A. Yes.

Mr. Campbell: That's all.

#### Recross-Examination

By Mr. Gillen:

Q. Mr. Fritchett, do I understand that daily you kept a record of the money taken in and the money paid out, is that correct? A. Yes.

Q. And also who you owed money to and who owed money to you, is that correct? A. Yes.

(Testimony of Albert Frederick Fritchett.)

Q. And then in the case of markers the records were kept? A. Yes, sir.

Q. And when the end of the month was reached, you made a recapitulation of the total month's business, did you not? A. Yes.

Q. And if somebody owed money on markers as long as a month, that marker was kept until paid?

A. That is true.

Q. And when you left there were 15 thousand dollars in markers unpaid? A. Correct.

Q. And if those markers had not been paid, the B & R would have had a loss in 1945?

A. Yes, sir.

Q. And you don't know whether they were paid any part or not? A. I don't know. [1544]

Q. And you don't know, therefore, whether the B & R Smoke Shoppe made or lost money in 1945—it all depended on whether the markers were paid?

A. I don't know.

Mr. Gillen: That's all.

#### Redirect Examination

By Mr. Campbell:

Q. Just what did your monthly recapitulation show?

Mr. Gillen: Objected to as asked and answered.

The Court: He may answer the question.

A. What did it consist of?

Q. Yes, did it consist of more than one figure?

A. How much was won and how much was lost and how much was still owed.

(Testimony of Albert Frederick Fritchett.)

Q. Did your monthly recapitulation, was that more than one sheet or one sheet?

A. Just on one sheet.

Q. And showing the winning, loss, and how much was owed, is that correct? A. Yes.

Q. Was the amount which you owed in one figure or more than one figure?

A. The amount which we owed?

Q. Yes.

A. It would be in more than one.

Q. And the amount owed to you? [1545]

A. Would be more than one figures.

Q. The names of those that owed you, were they on that monthly recapitulation sheet?

A. Yes.

Q. And the names that you owed, were on that sheet, is that correct? A. Yes.

Mr. Campbell: That's all.

Mr. Gillen: That's all.

(Witness excused.)

**MR. BERT BUSTERNA**

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

**Direct Examination**

**By Mr. Campbell:**

Q. Will you state your name?

A. Bert Busterna.

Q. Are you sometimes known as Bert the Barber? A. Yes, sir.

(Testimony of Bert Busterna.)

Q. That was your occupation at one time?

A. Yes, sir.

Q. Where do you reside, Mr. Busterna?

A. 50 Laguna.

Q. In the City of San Francisco?

A. City of San Francisco, yes.

Q. What is your business or occupation.

A. I have a cigar store. [1546]

Q. Are you acquainted with Elmer Remmer, the defendant?

A. Yes, sir.

Q. How long have you known him?

A. Oh, 14 or 15 years.

Q. Have you at any time been associated with him in the conduct of business?

A. Just one place.

Q. What was the name of that place?

A. 186 Club.

Q. And that is located at 186 Eddy Street, in San Francisco?

A. Yes, sir.

Q. There was, I believe, also on the same premises a concern known as the Day-Night Cigar Store?

A. In front, yes.

Q. Did you have any connection with that?

A. No, sir.

Q. Of any kind?

A. No, sir.

Q. Now, when did you first become associated in the 186 Club?

A. It was the year of 1943.

Q. Do you recall approximately what part of that year?

A. I don't remember.

Q. Well, now, in what manner did you become associated with the 186 Club?



(Testimony of Bert Busterna.)

A. Well, I heard that the place was for sale and I went over [1547] to him and asked him if he would like——

Q. You went over to whom?

A. Mr. Remmer.

Q. All right, proceed.

A. And I told him about it and he said, "Well, I will look into it," so about a week later he bought it and put me in charge of it.

Q. As manager? A. As manager, yes.

Q. What was the business of the 186 Club?

A. Well, it was a card room.

Q. And it operated, did it, on the back of the premises in which the Day-Night Cigar Store was located? A. That's right.

Q. Now, how long did you remain there as manager of the 186 Club?

A. Well, from that time until 1947.

Q. And you continuously managed over that period? A. Yes, sir.

Q. Now, did you at any time invest any money or pay any money to any one in connection with the acquiring of the 186 Club?

A. You mean, did I invest any money to buy the place?

Q. Yes. A. No, sir.

Q. Who, if you know, put up the money for that property? [1548]

A. Well, it was the only one that talked to me, was Mr. Remmer.

(Testimony of Bert Busterna.)

Q. Do you know how much was paid for that club? A. No, I do not know, sir.

Q. Now, will you state whether or not in the operation of the club if a bank roll was used?

A. Yes, sir.

Q. Who put up the bank roll?

A. Well, Mr. Kyne put up the bank roll.

Q. Do you know whether or not it was Mr. Kyne's money? A. That I couldn't say.

Q. How much was the amount of it?

A. I couldn't give the correct figure because I don't remember.

Q. You don't recall at this time?

A. No, sir.

Q. Let me show you exhibit here in evidence, Mr. Busterna, plaintiff's Exhibits 110 to 110F inclusive, which have heretofore been identified as poker sheets from the 186 Club, and ask you if you are familiar with sheets of this character used in connection with that business? A. Yes, sir.

Q. Were such sheets kept daily in connection with the operation of the business?

A. Well, as far as those sheets is concerned, I recognize them all right, but I don't know how they kept them because I don't know much about the office work and I had some people [1549] working in there who kept the sheets themselves.

Q. Were such sheets kept by the employees?

A. Yes, sir.

Q. Were they employees operating under your direction as manager? A. Yes, sir.

(Testimony of Bert Busterna.)

Q. Who kept the poker sheets? Who were those individuals, what were they known as?

A. They were kept in the office.

Q. By office, do you refer to a room in the building on the premises?

A. In the office in the club room.

Q. Well, were the people who kept these also known as cashiers? A. Cashiers, yes.

Mr. Gillen: Objected to as leading and suggestive, leading his own witness.

The Court: The answer may stand.

Q. Now, I observe that there are several sheets apparently for each day. Can you state how that came about, Mr. Busterna? A. What, sir?

Q. There are several sheets for each day.

A. Yes, sir.

Q. How does that come about?

A. I don't know; I couldn't say.

Q. How many hours a day was the club [1550] open. A. Twenty-four hours a day.

Q. Did the employees work in shifts?

Mr. Gillen: May it please the Court, this sounds like a waste of time. It has been established in the record there were three eight-hour shifts. I think that has all been established in the record, just wasting time going over that again. We will stipulate there were three shifts of work and the place was open 24 hours a day.

The Court: Objection overruled. You may answer the question.

(Testimony of Bert Busterna.)

(Question read.)

A. Yes, sir.

Q. Now isn't it a fact, Mr. Busterna, that different sheets were kept for each shift?

Mr. Gillen: Objected to. He is cross-examining his own witness. The question is a cross-examination question—isn't it a fact, and setting forth the facts.

The Court: Objection overruled. Answer the question.

A. I don't know anything about the office, whatever they did, sir. They kept the sheets themselves. I didn't know anything about it.

Q. Who directed what should be put down on the sheets? Who gave instructions to the employees in that regard? A. Themselves.

Q. Did you give them any instructions as to keeping of these [1551] sheets? A. No, sir.

Q. Who did instruct them?

A. Themselves. They got along together and thought that was the best way to keep them.

Q. Who are they?

A. The office; boys that worked in the office.

Q. What were done with the sheets at the end of each day?

A. They were put away in the drawer.

Q. Then was happened to them?

A. Well, somebody come and picked them up the next day or something.

Q. Who picked them up the next day?

(Testimony of Bert Busterna.)

A. Well, there was Mr. Slater to start with, he was one of them. Mr. Kyne picked them up a few times.

Q. Yes?

A. Then certain times, or times I got around earlier, I made them up myself.

Q. You made them up? A. Yes.

Q. What do you mean?

A. Well, figured them out.

Q. Figured what out, Mr. Busterna?

A. Figured to see how they stood, how much money we made or whether we made any or [1552] not.

Q. Then what would you do with the sheets?

A. Turned them over to 50 Mason Street.

Q. Were any books or records kept on the premises at 186 Club?

A. I don't know, sir. I think there was only the sheets kept.

Q. Well, you say they were delivered over to 50 Mason Street? A. Yes, sir.

Q. Was that done daily?

A. Well, sometimes daily; sometimes every two or three days or a week.

Q. What was done with the money that was taken in?

A. Well, when there was any money it was brought up to 50 Mason Street and when there wasn't any, it was still brought up there.

Q. What?

A. When there was money in the sheets, it was

(Testimony of Bert Busterna.)

taken out and put here and sent over to 50 Mason Street.

Q. Where was it put over there?

A. Just left it on top of the table, or if somebody was in charge, Mr. Maundrell or Mr. Slater, or someone, Mr. Kyne. Someone was there all the time.

Q. Was that office open 24 hours a day, too?

A. No, that was in the afternoon.

Q. It was left on top of the table?

A. Well, when there was a man there to receive it, then we gave it to him. [1553]

Q. During the time you were manager there, did you receive any salary?

A. I got twenty-five a day.

Q. Did you receive any other amounts of money?

A. Yes, sir; I got five thousand dollars a year for three years.

Q. For what three years did you get that five thousand? A. 1943, '44 and '45.

Q. What did that represent? What did you get that for? A. Well, 25 per cent.

Q. You were supposed to have 25 per cent?

A. Yes, sir.

Q. Who told you that? A. Mr. Remmer.

Q. Did you have a written agreement regarding that? A. No, sir.

Q. Were you familiar with the fact that a corporation was formed?

A. No, I never heard anything about it.

The Court: We will take our recess now.

(Jury and alternate jurors admonished and 15-minute recess taken.)

2:45 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. BUSTERNA

resumes the witness stand on further [1554]

Direct Examination

By Mr. Campbell:

(Last question and answer read.)

Mr. Gillen: We offer the objection it is assuming something not in evidence and misinterpretation of the evidence in the case.

The Court: Well, it has already been answered.

Mr. Gillen: What is it?

The Court: The question was answered.

Mr. Gillen: I know, but the question doesn't contain the facts.

The Court: It has already been cancelled.

Mr. Gillen: The way the question was asked, it would indicate——

The Court (Interceding): Well, Mr. Gillen, there is nothing before the Court.

Mr. Gillen: All right, if you want the record to be in error, leave it.

The Court: I don't want the record to be in

(Testimony of Bert Busterna.)

error. Did you say if I want to leave the record in error?

Mr. Gillen: No, I said if we want the record to be in error. I was trying to explain something I thought was misleading.

The Court: It may stand.

Q. Mr. Busterna, I am going to show you plaintiff's Exhibit 87, stated to be corporation income and declared value excess profits tax returns for the fiscal year July 1, 1943, to [1555] June 30, 1947, for the 186 Club, and drawing your attention to the signature appearing immediately before the provision "President," I will ask you if you recognize that signature? A. Yes, sir.

Mr. Gillen: What year is that for?

Mr. Campbell: Fiscal year ending June 30, 1946.

Q. Whose signature is that? Is that your signature? A. Yes, sir.

Q. Now did you prepare this return, Mr. Busterna?

A. Well, I can't tell you this because I don't know anything about the keeping or anything about the profits or tax or anything else there; I just don't know.

Q. Who, if anyone, presented that to you for your signature?

A. I think this was presented to me by Mr. Kyne.

Q. Did you read it at the time?

A. No, sir; I did not read it at the time.

Q. Do you, yourself, know whether or not the



(Testimony of Bert Busterna.)

figures set forth thereon, as relative to income and profit, are correct?

A. That I couldn't tell you, sir; I don't know.

Q. I call your attention to the other document, which is a part of this Exhibit 87, which is entitled "Tentative Return Corporation Excess Profits Tax Return Fiscal Year Beginning July 1, 1943, and Ending June 30, 1944," and ask you if that is your signature there as president?

A. That is my signature. [1556]

Q. Who, if anyone, presented this to you for your signature?

A. I think that was also Mr. Kyne.

Q. Do you know whether or not the figures set forth thereon are true and correct?

A. I don't know, sir; I couldn't tell you.

Q. Now when you signed this as president, to what did you refer? A. Sir?

Q. When you signed that as president, to what did you refer?

Mr. Gillen: Object to that, it speaks for itself, may it please the Court, we object to it on that ground.

The Court: Objection overruled.

A. I don't know. I just signed it. It was presented to me and that's all, I signed it.

Q. I am going to show you plaintiff's Exhibit 88A, the corporation income and declared value excess profits tax return of the 186 Club fiscal year beginning July 1, 1944, and ending June 30, 1945; directing your attention to the signature thereon,

(Testimony of Bert Busterna.)

Bert Busterna, president, and ask you if that is your signature?

A. Yes, sir; that is my signature.

Q. And I draw your attention to the printed word, hand-printed, "President"; did you print that on there, immediately appearing under your signature? A. No, sir; that is not me. [1557]

Q. You did not put that on there?

A. No, sir.

Q. Are you familiar with the figures set forth in this return and the schedule set forth in this return? A. No, sir; I am not.

Q. Do you know whether or not the figures set forth herein and the information set forth herein are true and accurate?

A. I couldn't tell you, sir.

Q. This is noted as signed the 15th day of February, 1945. Do you recall who, if anyone, presented this to you for your signature?

A. That would only be one man to me, Mr. Kyne, that's all.

Q. I direct your attention to the fact that there has been testimony that Mr. Kyne was at that time in the service.

A. Well, I couldn't say; either he or Mr. Slater, that is the only two ever presented me this kind of papers.

Q. I am going to direct your attention to defendant's Exhibit A, which purports to be the Articles of Incorporation of the 186 Club, as certified to by the Secretary of State of the State of Cali-

(Testimony of Bert Busterna.)

fornia, and ask you if you have ever seen the Articles of Incorporation of which this purports to be a certified photostatic copy?

A. Is this a charter? We have a charter, it looks like this.

Q. Will you examine it?

A. I couldn't recall having seen. [1558]

Q. You couldn't recall having seen the document set forth on the 2nd and third pages following the certificate?

A. No, sir.

Q. Did you ever attend any directors' or officers' meetings of the 186 Club?

A. No, sir; we had none.

Q. Do you know whether or not any minute books were kept of the 186 Club?

A. That I couldn't tell you, sir.

Q. Do I understand you that you were to have a 25 per cent interest in the 186 Club?

A. Yes, sir.

Q. Who else, if anyone, had an interest in that club?

Mr. Gillen: I think the record would be the best evidence, the books and records of the club.

The Court: He may answer the question.

A. Well, all I know, supposed to be five or six of them.

Q. Who were they?

Mr. Gillen: Objected to. The record would be the best evidence.

The Court: Objection overruled. You may answer the question.

(Testimony of Bert Busterna.)

A. Well, there was Lando for instance, one of them.

Q. Who? A. Mr. Lando. [1559]

Q. Yes? A. Supposed to be Mr. Kyne.

Q. Yes? A. Supposed to be Mr. White.

Q. Mr. White?

A. Well, Mr. Dutch White; I don't know his name.

Q. Are you referring to Attilio Casselini?

A. Casselini, that's right. There was another one, Niels—he is dead now.

Q. Nelus?

A. Nelus and Kopstick. They are all supposed to have a part of the club.

Q. Do you know what interest they had?

A. I can't tell you.

Q. Do you know whether or not Mr. Remmer had an interest?

A. Yes, sir; he was supposed to have an interest also.

Q. Do you know what his interest was?

A. I couldn't tell you, sir.

Q. You say in addition to your daily wage or salary of \$25, also in each of the years 1943, 1944 and 1945 you received the amount of five thousand dollars? A. Yes, sir.

Q. Who paid you that money?

A. Mr. Remmer gave it to me.

Q. And what did that money represent? [1560]

A. My 25 per cent.

Q. Of the profits? A. Of the profits.

(Testimony of Bert Busterna.)

Mr. Gillen: Of course, I think that is calling for his opinion and conclusion.

The Court: The answer may stand.

Q. In what form was the money given to you?

A. It was given to me in cash.

Q. By cash, do you refer to currency?

A. Yes, sir.

Q. Was it given to you at any particular time of each of the years?

A. The end of the year, along about this time, maybe around about Christmas week.

Q. In other words, at the end of the year or beginning of the following year; is that correct?

A. Yes, sir.

Q. I call your attention to the fact that the returns which you signed, which show the 186 Club to be on a fiscal year basis ending June 30th each year. Were you ever paid any of those sums around about June 30th of any of the years involved?

A. What was that?

Q. Were you ever paid this five thousand dollar amount around about June 30th of any of the three years in which you received it? [1561]

A. I can't recall.

Q. You stated, I believe, in reference to the poker sheets, that on occasions you made these up yourself?

A. Occasionally, yes.

Q. I am going to ask you to examine these and state whether any of these were made up by you? I am referring to the 110 series.

A. There are some by me; yes, sir.

(Testimony of Bert Busterna.)

Q. Will you indicate which ones were made up by you? A. This one.

Q. You have handed me 110F; was this made up by you? A. Yes, sir.

Mr. Avakian: I believe there are several sheets in 110F. Were they all made up by him?

Mr. Campbell: I will come to that in a moment.

Q. Do you recognize any of those?

A. Yes, sir; here is one.

Mr. Campbell: The witness has handed me 110 (e).

A. There is another one.

Mr. Campbell: The witness has handed me 110 (d).

A. That is all, those three.

Q. Now in regard to Exhibit 110F, which purports to be for December 31, 1946, when you say you made this up, to what portions of the exhibit do you refer? What did you make up on [1562] that? A. I can't see from here.

Q. I ask you, Mr. Busterna, what portion you made up. What figures did you put in, either on the face or the back of those sheets, 110F?

A. Well, here, there, sir; right over here. This 479 and 355, we taken off.

Q. You are referring to the totals of the columns on the sheet? A. That's right.

Q. Showing the amounts of loans and the returns and the take from the table; is that correct?

A. No, show the ins and outs and receipts of the day. As far as the IOU's and stuff like that, I

(Testimony of Bert Busterna.)

don't know much about it. I don't know a thing about it.

Q. By IOU's are you referring to items on the right-hand column? A. Yes, sir.

Q. You didn't make those up? A. No, sir.

Q. Did you keep any record of those yourself?

A. No.

Q. Whose duty was that?

A. That was the clerk at 50 Mason Street.

Q. Do you know who at 50 Mason Street kept those records?

A. Well, the bookkeepers there, like Mr. Slater for one. [1563] After Mr. Slater was gone, I think Mr. Maundrell or the girl. There was other people working there.

Q. Now with regard to this sheet and to the portions on the left side where you have total. Calling your attention to the column, "Amount loaned," against which amounts are set forth opposite names in the left-hand column, to what does that refer?

A. This refers to when you start the games, you have different people to play, you might have to put somebody in or yourself, you have to play yourself in order to keep the games going, you have to fill in. It is losses and winning.

Q. Do those refer to amounts advanced to people employed by the house to keep the games going?

A. Not employed by the house. For people who would be around there, that you could put in. For instance, you have a game \$22 limit, you have to have \$20 to play and some people haven't got \$20.

(Testimony of Bert Busterna.)

Q. The house advances it?

A. The house advances, or else somebody that stays there a long time, you give them the money.

Q. What was done with the profits?

A. If they won, they get half; if they lose, it don't cost them nothing.

Q. On this 110F first page, I notice amount loaned is 355 and the amount returned is [1564] 480.50.

A. That's right.

Q. It was a winning sheet, as far as the players that the house was backing, was concerned?

A. That's right.

Q. You have also included in the 355 the wages of four house men, is that correct, that is yourself and three employees?

A. I don't know.

Q. I call your attention to \$25 Busterna wage?

A. Yes, it is there. Evidently that is where they put it. I never know how they kept sheets or nothing.

Q. And you yourself know nothing about whether the club was operating at a profit or loss?

A. Well, we operated at a profit, sir.

Q. At a profit? A. A little profit, yes.

Q. Is that true during the years 1944, 1945 and 1946?

A. Yes, sir.

Q. And you operated at a profit for each year?

A. If I recall it right, yes, sir.

Q. What was the source of your knowledge in that regard; that is to say, was it from books or records or from your personal observation?



(Testimony of Bert Busterna.)

A. Personal observation. I don't know anything about the books, never seen a book or nothing.

Q. Had you been in that business before, Mr. Busterna? [1565]

A. No, that is the first time.

Q. Do you know whether or not a bank account was maintained for the business?

A. Bank account?

Q. Yes. A. I don't know, sir.

Q. Did you have access to any safety deposit box in connection with the business? A. No, sir.

Q. Did you have access to the safe at 52 Mason Street? A. No, sir.

Q. Now what was done with the winnings each day? You stated you delivered the poker sheets to 50 Mason Street? A. Yes, sir.

Q. You also delivered the winnings there, or did you? A. Delivered all; yes, sir.

Q. On those occasions would you receive a receipt from anyone? A. No, sir.

Q. In addition to the \$25 a day which was paid you and the five thousand dollars you say which was paid you for 1943, 1944 and 1945 by Mr. Remmer, did you receive any further compensation?

A. No, sir, except that I owed some money myself to the club.

Q. You borrowed some money from the club?

A. I didn't borrow it. I just used it for myself to play lowball with.

Q. Did you owe that money at the end of [1566] 1946?

(Testimony of Bert Busterna.)

A. I owed it for a period of a couple of years; yes, sir.

Q. Will you state whether or not that represented your personal gambling or gambling in behalf of the club?

A. That was my own personal gambling.

Q. Will you state whether or not that was an account owed by you to the 186 Club?

A. Well, just wrote an IOU, that's all.

Q. But it was owed by you to the club? You owed that to the Club? A. Yes, sir.

Q. How much did that amount to?

A. I am not sure whether 30 or 35 thousand, something of that sort.

Q. Do you recall the amount at the end of 1946?

A. That was the end. I didn't go any further with it.

Q. How much did you owe December 31, 1946, do you recall?

A. Supposed to be in the books. I don't remember whether 30, 31, 32, 33, or 35 thousand.

Q. I call your attention to 110F, the poker sheets for December 31, 1946, and to the column which you stated represented the IOU's or markers, and ask you whether or not your name appears upon that list?

A. No, it doesn't appear here, sir.

Q. Now will you state whether or not on that date you owed any money? [1567]

A. Well, I don't remember when I owed it. I know I owed within a period of a couple of years.

(Testimony of Bert Busterna.)

What date I just couldn't tell you, I don't know.

Q. I show you the sheet January 1, 1944, and call your attention to the item on what you have called Marker, Bert, \$3500.79; does that represent the amount you owed on that date?

A. That is my name here; yes, sir.

Q. Is that the amount that you owed on that date? A. It might have been.

Q. What is your best recollection?

A. Well, I couldn't say. It is my name, all right.

Q. I call your attention to 110 (d), poker sheets for December 31, 1945, and the item Bert, \$8500.

A. That's right.

Q. Is that the amount that you owed on that date? A. It must have been; yes, sir.

Q. Now you say it amounted to 30 or 31 thousand dollars. Do you recall when it reached that amount? Do you recall what date it was that you owed that amount?

A. I couldn't recall the date. It was around '46.

Q. Do you recall what date in 1946?

A. No, sir; I can't recall the dates, sir.

Mr. Campbell: I am going to ask to have these two photostatic pages marked government's next in order for identification. [1568]

Q. Showing you plaintiff's Exhibit 149 for identification, I will ask you if you ever saw the original document of which that is a photostatic copy?

A. Yes, I have seen this.

Q. Where did you see it?

(Testimony of Bert Busterna.)

A. Well, they do carry a sheet like that in the office of the club.

Q. Do you know what date this particular sheet was made up?

A. No, unless it is dated, sir, I couldn't tell you.

Q. Do you recognize the handwriting on this?

A. They are the sheets in the office—some one's handwriting, one of the boys, I don't know which one.

Q. Now calling your attention to the poker sheets 110(e) for January 1, 1946, and under the right-hand column, which you say represent the IOUs, there first appears Kyne, \$28,170. Do you know what that refers to?

A. Well, it might have been a credit due to him, I couldn't tell you.

Q. That did not represent an IOU from Kyne to the club then? A. I couldn't say.

Q. The next appears "Tax box \$1769." Do you know what that is?

A. That is when we run short of money, I think Mr. Kyne had this much money coming to him, credit to him. This tax box, we run short of money sometimes and we use the tax box money if we did need cash. [1569]

Q. What was the tax box money?

A. The tax box money is money that they take out for employers.

Q. That is withholding?

A. I don't understand, but that is the way I got it.

(Testimony of Bert Busterna.)

Q. That was used in the conduct of the business?

A. That was put away and certain times we didn't have enough money to cash checks, we used that for replacement.

Q. As I understand, as to those first two items, Kyne and tax box, they represent money that the 186 Club owed rather than money that was owing to it?

A. I guess so, that's the way I figured.

Q. We have here Clemente \$9115, what does that represent?

Mr. Gillen: Just a moment. I think that is not assisting the tryers of the fact. If a man knows, he knows; if he doesn't know, he can say so.

The Court: Well, the jury will understand. That is a matter on credibility.

Mr. Gillen: If the witness only thinks so, believes that to be so, it isn't very helpful to us.

The Court: The answer may stand.

Q. I call your attention to Clemente, \$9115, what does that represent?

A. Sir, truthfully I couldn't tell you whether they owed us money or had money coming. I couldn't say because I don't [1570] know anything about the books. I am sorry to say I don't.

Q. There is an item here, Busterna \$8500.

A. Well, that is money I owed, I guess must be, can't be any other way.

Q. That was money you owed or money owed to you?      A. No, sir.

(Testimony of Bert Busterna.)

Mr. Gillen: He is cross-examining his own witness.

Q. Now, Mr. Busterna, do you recall whether or not a 1946 return for the 186 Club was prepared?

A. No, sir. For that year I never even filed one myself.

Q. I am referring to the fiscal year ending June 30, 1946. Do you know whether or not a return was prepared or filed for that year?

A. I don't know anything they done outside the 186 Club.

Q. I am asking about the 186 Club, if a return was filed?

A. I don't know anything they done, sir, whether they made returns or not. I don't know anything about it.

Mr. Campbell: You may cross-examine.

#### Cross-Examination

By Mr. Gillen:

Q. Mr. Busterna, you testified that you originally heard that the 186 Club was for sale, is that true?

A. That's right.

Q. And that hearing that, you went to Mr. Remmer and asked him if he would be interested in purchasing the 186 Club?

A. That's right. [1571]

Q. Of course, you had in mind when you made that proposal that you would become identified with it, have an interest in it, is that correct?

A. Yes, sir.

(Testimony of Bert Busterna.)

Q. Did you negotiate for the purchase of that at all yourself, or did you leave that to Mr. Remmer and his associates?

A. I didn't do anything of the kind.

Q. Just advised him of the availability of the place, that is, it was for sale, is that correct?

A. That's right.

Q. And then subsequently you became a president of the enterprise and got \$25 a day salary, is that correct?

A. That is right.

Q. What hours did you work there?

A. Well, I worked, you might say all hours.

Q. I mean what was your usual time, night or day time?

A. I never had any usual hours.

Q. Now you stated the place was open 24 hours a day, is that correct?

A. Yes, sir.

Q. And there were three 8-hour shifts, were there not?

A. Yes, sir.

Q. And for each shift there was a cashier in the cage, isn't that so?

A. That is right. [1572]

Q. And he was the man who kept track of the money for his 8-hour shift, is that correct?

A. That is right.

Q. And at the end of this 8-hour shift he would make out a sheet as to how things stood at the end of his shift, is that true?

A. That's right.

Q. The other man would take over from that, the succeeding cashier?

A. That is right.

Q. Then there were employees, were there not, who took care of games from the floor and supplied chips, etc., floor men, so called?

(Testimony of Bert Busterna.)

A. That's right, floor men.

Q. Now you were there from 1943 until 1947?

A. That's correct.

Q. Directing your attention to defendant's Exhibit A, the 186 Club was already incorporated when it was purchased by Mr. Remmer and his associates, isn't that true? A. That's right.

Q. In other words, that was incorporated on July 7, 1939, according to this exhibit, so that at the time you suggested to Mr. Remmer that he buy the place, it was already an incorporated club, incorporated under the laws of the State of California, is that true? [1573] A. That's right.

Q. Now do you recall an Internal Revenue agent, a Mr. Mooser, coming to the club and checking the club for a period of about a month, for the purpose of determining the approximate amount of business it did?

A. I remember something about it, yes.

Q. Is it within your knowledge that Mr. Mooser stated that the club would have to make the return as a corporation rather than partnership?

A. No, I never got into a conversation with him. I don't know anything about it.

Q. Was Mr. Slater the accountant who attended to the books of the club there?

A. At the time, yes.

Q. And during the time that Mr. Kyne was in the army, who was it that attended to the affairs of the club, 186 Club?

Mr. Campbell: Object to the question in that



(Testimony of Bert Busterna.)

form as assuming that Mr. Kyne had anything to do with the affairs.

The Court: Objection overruled. You may answer the question.

A. I don't know. I don't remember exactly but I think Mr. Slater was still active at that time.

Q. Was there any other accountant that had anything to do with the affairs of the 186 Club?

A. I can't recall it. [1574]

Q. Was there a Mr. Shaw took care of some of the books? A. Never heard of him.

Q. Never heard of Mr. Shaw.

A. Never heard of him.

Q. Do you remember a Mr. Byrne, a public accountant? A. Mr. Byrne?

Q. Yes, do you remember a Mr. Byrne? Do you recall whether he had anything to do with the accounts of the 186 Club?

A. No, sir, I can't recall him.

Q. Now I understood you to testify that in addition to the money that you drew out of the club by way of salary and by way of any other dividend or profit, that you also took out of the club funds, money, to indulge in some personal gambling, is that correct?

A. Yes, I played the house play low-ball.

Q. That wasn't for the club or the corporation, it was on your own?

A. My own personally, yes.

Q. And you simply took from the funds of the club and put your marker in?

(Testimony of Bert Busterna.)

A. Put chips in and lost them and had to be paid, so charged them to me.

Q. So you put your marker in?

A. That is right.

Q. There were other markers beside yours, were there not? [1575]

A. Oh, yes.

Q. There were quite a considerable number of markers?

A. There was quite a few markers, yes.

Q. And I take it that this 31 thousand or 35 thousand, whatever it was, that you ultimately owed the club, didn't happen all at the same time, at once? I mean, it was something that went over a period of time?

A. No, it wasn't all at once. It was over a period of time.

Q. So if the records showed one time you owed 8 thousand or 86 hundred, you might say that might be so?

A. Yes.

Q. And then if another time in 1946 the records showed that you owed \$31,600, you would say that that might be accumulation—I wonder if I can cross-examine the witness without—

Mr. Campbell: I was simply holding up my hand.

Mr. Gillen: It is very distracting.

Q. (Continuing): —of your markers over a period of time?

Mr. Campbell: Objected to as assuming a fact not in evidence. The books are the best evidence.

(Testimony of Bert Busterna.)

The books and records here show no such figure.

The Court: You say the books do not show?

Mr. Campbell: \$31,000, no, your Honor. Such records in evidence here do not reflect such a figure.

The Court: I thought they reflected a figure of 30 thousand. [1576]

Mr. Campbell: No, your Honor, as of the end of the period I read the item to the witness, \$500.

The Court: I think that is correct. There was no such entry in the books. Let us have the question.

(Question read.)

The Court: I think, Mr. Gillen, there is nothing in evidence——

Mr. Gillen: I understand there is no documentary evidence, but certainly evidence of his indebtedness from his own testimony.

The Court: Objection sustained.

Q. Well, did you owe 31 thousand dollars at any time?

A. I might have, I don't know whether 31 or 35, it may be 36, I don't know. I am not positive whether it was thirty.

Q. Are you certain it was over thirty thousand dollars?

A. It was over thirty thousand dollars, yes.

Q. It was over thirty thousand dollars?

A. Yes.

Q. And that was an accumulation, was it, over a period of time?

(Testimony of Bert Busterna.)

A. That was over a period of a couple of years, sir, if I recall it right. I am not positive.

Q. I understand you to say that you had no interest whatever or participation in anything concerning the Day-Night Cigar Stand, which was the liquor store and cigar stand in the front of the [1577] 186 Club? A. That's right.

Q. Now you testified it was your recollection that the amount of your markers, 31 thousand or 35 thousand, whichever it was, what was you owed at the end of 1946, is that correct?

Mr. Campbell: Objected to as stating a fact not in evidence. He didn't testify as to any particular date.

Mr. Gillen: Let us have the record.

The Court: That is my understanding at this time.

Mr. Campbell: No, your Honor, I went to considerable length to fix the date.

The Court: Let us look at the record.

(Question read.)

The Court: Answer the question.

A. Yes, sir.

Q. Did you ever pay those markers, 30 or 35 thousand dollars markers off? A. No.

Mr. Campbell: Objected to as immaterial. I ask the answer be stricken.

The Court: It may go out. What is your objection?

Mr. Campbell: My objection is it is immaterial

(Testimony of Bert Busterna.)

what is the subsequent history for the obligation owing at that date. It is the obligation owing at that time, the last date of the period. [1578]

The Court: He may answer the question.

A. No, sir, I never paid it.

Q. You still owe the 186 Club 30 to 35 thousand dollars? A. That's right.

Q. Now do you have any recollection of how much the other markers amounted to, other than your own?

Mr. Campbell: Objected to—the books and records are the best evidence.

The Court: Objection overruled. Answer the question.

A. Really I couldn't tell you, sir.

Q. Do you know what the status was the end of 1946 with regard to markers other than your own?

Mr. Campbell: Same objection, the books and records are the best evidence.

The Court: Objection overruled. You may answer the question.

A. There are quite a few markers out. I couldn't recall the right amount.

Q. Isn't it a fact that practically all the profits of the 186 Club went out in markers?

Mr. Campbell: Same objection.

The Court: You may answer the question.

A. Well, I don't think all the profits went out for markers, but it was so we didn't make as much money as we thought we would make.

Q. Isn't it a fact that you had to replenish your

(Testimony of Bert Busterna.)

bank roll [1579] frequently from other enterprises.

A. Certain days we run short of money, that is right, we had to go ask the office for funds.

Q. That is because you had markers rather than cash? A. That's right.

Q. And sometimes you even had to go to the social security box, the tax box, to get money, isn't that so? A. I just said that, yes, sir.

Q. And you presently have no independent remembrance of how the marker situation stood in regard to the 186 Club at the end of 1946?

A. All I know, the man working in the office took care of all books. I don't know anything about it, what they did or didn't do. The only time I knew when they run short of money and they asked me for money and I called up the office and got some whenever I could.

Q. Now, Mr. Busterna, I am going to hand you, with the clerk's permission, two photostatic sheets, designated plaintiff's Exhibit 149 for identification. Mr. Campbell showed you those two sheets before and you testified that they were the type of sheet that was kept by the club, do you recall that?

A. Yes, sir.

Q. Now does that refresh your recollection as to how the marker situation stood at the 186 Club, aside from your own markers? [1580]

Mr. Campbell: As of what date? I object unless the date is stated.

The Court: Can you supply the date you have in mind?

(Testimony of Bert Busterna.)

Mr. Gillen: I asked him with regard to 1946 but I am asking him now if that assists him in recalling anything about the situation?

A. Well, this was the way they kept the markers.

Q. There is no date on either of those pages?

A. No.

Q. Is there anything about those pages that assists you to recall when that page may have been made out?

A. I couldn't recall even if there was a date in it, because I don't remember.

Q. Mr. Busterna, I am going to ask you to look at the left-hand column of the first page of this exhibit, the third entry from the bottom of the page, and I will ask you if you know who that refers to and what it refers to?

Mr. Campbell: I am going to make objection that the document until further identified—this can be supplied by stipulation—it is not in evidence, if the Court please. I think he can lay the foundation for the document.

The Court: It is not in evidence, Mr. Gillen. What is your purpose? If the question is just to have presented in the record the contents of the instrument, I think the objection is good. [1581]

Mr. Gillen: No, my purpose is to show a certain item to the witness and see if that aids him in identifying the document.

The Court: Then can't you reframe your question so it will appear to him that this is the purpose, rather than have him read something.

(Testimony of Bert Busterna.)

Mr. Gillen: All right. I will withdraw the last question.

Q. I now ask you, Mr. Busterna, to look at the third from the last item on the left-hand side of the first page of that exhibit and tell me whether, looking at that, that refreshes your recollection in any respect as to the time that that sheet was made out or what period of time it represents?

Mr. Campbell: I am going to make an objection. As previously stated, in response to counsel's question and my questions, he does not recognize the handwriting, he doesn't know when it was made and he has never seen it before.

The Court: Objection will be overruled. It goes to the weight.

Q. Do you have the question in mind?

A. I don't know when this was made, sir. All I read here is my name, Bert, \$31,600, that is all I know about it and there is no time or date I can recall.

Q. Do you have any independent recollection at this time of any period of time that you owed \$31,600 to the 186 Club?

A. Will you repeat that again please? [1582]

Q. Do you have any independent remembrance in your mind now of when you owed, if you did at any time owe, the sum of \$31,600 to the 186 Club?

A. Well, just as I went along, within a period of a couple of years.

Q. Now my question is now do you remember



(Testimony of Bert Busterna.)

any particular time when the amount you owed the 186 Club was \$31,600?

A. I am not positive whether I owe 31 thousand or 36 thousand.

Q. So your answer is you don't remember any specific time when you owed that exact amount?

A. I don't remember, sir.

Q. I understand you to say when Mr. Kyne was connected with the enterprise and other than the time he was in the army Mr. Kyne used to come and pick up the poker sheets on occasions and the money from the 186 Club, is that correct?

A. He did, yes.

Q. And they were taken over to Mr. Maundrell, or whoever was keeping books?

A. I don't know what he did, but the only time I can say Maundrell got the sheets is when I brought it over.

Q. And then when Mr. Kyne was away, you on occasions brought the sheets over to 50 Mason Street?

A. That is right.

Q. And if there was some money, you brought over the money and turned it over to whoever was in charge of the office at that [1583] time?

A. Yes, sir.

Q. Some times Mr. Maundrell?

A. Yes.

Q. Sometimes Mr. Slater?

A. Sometimes a lady there.

Q. A lady there, the secretary?

A. Secretary, yes, sir.

Q. Now among the persons who had an interest

(Testimony of Bert Busterna.)

in the 186 Club was Mr. Nelus and Mr. Kopstick, you testified?      A. Yes.

Q. Do you know what interest they had?

A. I couldn't tell you, sir. There were five or six in it, I don't know.

Q. And you said Mr. Nelus was now deceased?

A. Yes, and so is Mr. Kopstick.

Q. He is also dead?      A. He is also dead.

Q. Did Mr. Nelus and Mr. Kopstick remain in the organization or withdraw?

A. I don't know. I heard they were partners but they never took active part in it, either one. It was seldom they come in.

Q. Was anything brought to your attention about reimbursing them for the investment that they made in the place? [1584]      A. No, sir.

Q. Did you know that they were reimbursed for the investment that they made in the one-sixth interest in the enterprise between them?

A. I couldn't say, sir.

Q. Now you were designated as president of the club, is that correct?      A. Yes, sir.

Q. And the returns that you made on taxes for the corporation to the government was not prepared by you?

A. The only tax returns I made was for money I got and Mr. Slater made them for me. Nothing else, I don't know anything about that.

Q. In other words, Mr. Slater helped you with your own personal return?

A. Yes, I just took care of my personal.

(Testimony of Bert Busterna.)

Q. Do you know who made out the income tax returns for the corporation? A. No, sir.

Q. You said they were presented to you either by Mr. Kyne or Mr. Slater?

A. Yes, papers I signed, yes.

Q. Those papers Mr. Campbell showed to you?

A. Yes, sir.

Q. And as to the details of those, I assume that you left that [1585] up to the accountant to work it out? A. Yes, sir.

Q. Now do you recall how long Mr. Mooser, the Internal Revenue agent, was around the 186 Club?

A. No. There was one time I heard his name is all. I never had any conversation.

Q. Regardless of conversation, do you remember seeing him there? A. No, sir.

Q. You were there every day yourself, were you not, through the period of years that you were identified with the place? A. Yes, sir.

Q. And you were present there mostly at night or in the day time?

A. Well, just a question of when I must go there, whenever I felt like it. Sometimes I go out and sleep and eat and come back and go to work again.

Q. Did anybody point Mr. Mooser out to you or introduce you to Mr. Mooser, the Internal Revenue agent? A. No, sir.

Q. Did any one tell you Mr. Mooser was there

(Testimony of Bert Busterna.)

checking the average business of the place regarding what tax should be paid?

Mr. Campbell: Objected to as hearsay.

The Court: Answer the question yes or no. [1586]

A. No, sir.

Q. When you say you heard Mr. Mooser's name mentioned, by whom did you hear it mentioned?

A. Mr. Willie Kyne.

Q. And what did Mr. Willie Kyne say about Mr. Mooser? Did he say he was an Internal Revenue agent?

Mr. Campbell: Objected to.

The Court: Objection sustained.

Q. Did he identify Mr. Mooser for you?

A. No, sir.

Mr. Campbell: Objected to as calling—he answered.

Q. How did you know it was Mr. Mooser the revenue agent Mr. Kyne was referring to?

Mr. Campbell: Objected to as incompetent.

The Court: You may answer the question.

A. He never pointed him out to me. I just don't know Mr. Mooser.

Q. I understand that, but you heard Mr. Mooser's name—how do you know it was Mr. Mooser, the revenue agent?

A. I don't know, I am just thinking about Mr. Mooser's name. I don't know where he was. Mr. Kyne just mentioned some time or other.

Q. Earlier I asked you question, do you recall Mr. Mooser, the Internal Revenue agent, was in the

(Testimony of Bert Busterna.)

186 Club for some period of time checking the Club, and you said you had heard something [1587] about that, do you recall?

A. I heard the name Mooser but didn't hear about his being in the club.

Q. Did you hear he was an Internal Revenue agent?

A. I can't recall. It was quite a long time ago.

Q. You don't remember anything but hearing the name Mr. Mooser from Mr. Kyne?

A. Yes, sir.

(Jury and alternate jurors admonished and recess taken at 4:00 o'clock.) [1588]

January 3, 1951, 10:00 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

Mr. Campbell: May it please the Court, at this time, pursuant to stipulation which has been entered into, I wish to substitute photostatic copies for the original exhibits 147, 147A and 147B for identification.

Mr. Gillen: No objection.

The Court: Very well, the copies may be substituted.

Mr. Gillen: May it please the Court, in connection with the examination of Mr. Busterna, the government has previously produced the series 110 to

110F, which your Honor will recall were so-called daily poker sheets from the 186 Club. At this time I would like to request counsel, through the Court, to produce the balance of the poker sheets for the 186 Club. This series of exhibits represents the first and last day of the years involved in the indictment, with no intervening poker sheets. It was my information those were all turned over to the government and were in the hands of the government and I would like to have them produced at this time.

Mr. Campbell: We have no objection. It will take a minute or two.

Mr. Gillen: In the interest of time, I can proceed with the examination. [1589]

### MR. BUSTERNA

resumes the witness stand on further

### Cross-Examination

By Mr. Gillen:

Q. Mr. Busterna, although you testified that you personally had nothing to do with the keeping of books or records of the 186 Club, you do know, do you not, that the daily poker sheets that were kept by the cashiers represented the income and the output for that particular shift of each cashier, is that correct?

A. Well, the bookkeepers they kept their own books.

Q. Well, what I am getting at is this—each cashier did keep a sheet for his shift, did he not?

(Testimony of Bert Busterna.)

A. For his own shift, yes.

Q. To show what money he disbursed and what money he took in, am I correct?

A. That is right.

Q. And those were the sheets that were turned over to Mr. Slater and from which the records of the club were kept and from which the income tax returns were made, isn't that true?

Mr. Campbell: Object to that question in that form, assuming a fact not in evidence. The evidence is they were delivered at 50 Mason Street.

The Court: Let us hear the question.

(Question read.)

Mr. Campbell: I submit further it is a compound question which can not be answered with a yes or no. [1590]

Mr. Gillen: I am not asking for a yes or no answer.

The Court: Let me have the question again.

(Question read.)

The Court: You may answer the question.

A. Well, they were sheets that were turned over to Mr. Slater or else the office at 50 Mason Street.

Q. And those were the records that were turned over from which the books were kept or income tax returns made for the club, isn't that so?

A. That's the sheets, yes.

Q. Outside of the cashiers and the floor men, you were the only partner or member of the cor-

(Testimony of Bert Busterna.)

poration or officer of the corporation that put in full time, isn't that correct? A. That's right.

Q. The other men were employees, such as the shifts of cashiers and the floor men who looked after the floor, they were the only other full-time employees; is that true?

A. Put in full eight hours and they were through.

Q. And you were the only partner or official of the club who put in full time, is that true?

A. That's right, sir.

Q. Now you stated yesterday that you received \$25 a day or that you took out \$25 a day out of the bank roll of the club, that is true, is it not?

A. That's right. [1591]

Q. Now did you put that \$25 in your pocket or did you use that for expenses in and about the club?

A. Well, I didn't file for the \$25 a day I received from the 186 Club for the reason is that it was put in my pocket—well, there are a lot of fellows, small gamblers, whatever you call them, small players, lose five or ten dollars, after they had lost that they come to me always for a half dollar or dollar or two and by me giving to them at the end of the day I wound up with nothing.

Q. I understood you to say that you were not familiar at all with Mr. Mooser, the Internal Revenue man, spending about a month at the club checking on the average business that the club did. You were not familiar with that? A. No, sir.



(Testimony of Bert Busterna.)

Q. You did state, however, that you received for three different years five thousand dollars a year, which you believed was a dividend on the profits of the club, is that correct?

Mr. Campbell: Assuming something not in evidence. He said he was paid——

The Court: Objection sustained.

Mr. Gillen: It is assuming a fact not in evidence, your Honor?

The Court: Yes, sir.

Mr. Gillen: I understood his testimony to be that he thought he was receiving 25 per cent of the profits of the club. [1592]

The Court: The ruling will stand.

Q. Well, you did testify that you received each year for three years, 1943, 1944 and 1945, five thousand dollars each year? A. Yes, sir.

Q. Now is it your understanding that the club each year made the same amount of money?

A. That I don't know. All I say is that at the end of the year that there was five thousand dollars handed to me.

Q. Now I am going to direct your attention to the prosecution's Exhibit No. 87A and that exhibit shows on the face that it was prepared by Louis H. Mooser, Jr., Deputy Collector of Internal Revenue at San Francisco, California, and it is the return of the 186 Club for the fiscal year beginning July 1, 1943, and ending June 30, 1944, and I am going to read you a portion of this return and ask you if this refreshes your recollection of what you re-

(Testimony of Bert Busterna.)

ceived, Mr. Busterna. Schedule I reads as follows:

“During the month of June, 1944, Louis H. Mooser, Deputy Collector from the office of the Collector of Internal Revenue at San Francisco, California, called at the office of the above-stated corporation and examined its books and records for the fiscal period ending June 30, 1943, and required said corporation to file forms 1120-21 and 707 for said period. These returns were filed under Section 2606 of the I. R. code, which gives a deputy collector the authority to file such returns [1593] where either no records are kept or where records are not adequately kept. In the case of the 186 Club the records reported only the daily net take and were therefore not adequately kept and this was the status of the accounts of said corporation up to and including June, 1944, the date on which the Deputy Collector Mooser made his audit.

“Mr. Mooser determined from an examination that he made of the daily tally sheets that the daily average net take was \$70. Mr. Mooser believes that this determination would cover the entire period up to June, 1944.

“The returns filed by the corporation for the fiscal year ending June 30, 1943, were prepared on this basis and have been approved by the Collector.

“In 1944 the taxpayer filed an application with the deputy commissioner Salary Stabilization Unit for the following annual salaries for its officers: Bert Busterna, president, \$6,000; Attilio Casselini, vice-president, \$4,000; W. E. Kyne, secretary,

(Testimony of Bert Busterna.)

\$5,000; Sylvan Lando, treasurer, \$4,000; total \$19,000. The Salary Stabilization Unit has approved said applications.

“The books of account for the fiscal year ending June 30, 1944, disclose a total net take of \$13,265.15. In preparing corporation returns (112- and 1121) for the [1594] said fiscal year, the corporation is reporting its total net take for the year on the same basis as that which was used by Deputy Collector Mooser, \$70 per day;  $366 \times \$70$ , \$25,620.00 (a).”

Let me ask you there, was it brought to your attention that although the net take shows for the club for that fiscal year was only \$13,265.15, that the Club nevertheless used the figures of \$70 a day which had been set up by Mr. Mooser and paid on \$25,620 take, was that brought to your attention?

A. I don't know anything about that, sir.

Mr. Gillen (Continuing to read):

“However, when the returns for the prior period were prepared by the Deputy no provision was made for the compensation of administrative officers. This, however, has now been approved at \$19,000 per year by the Salary Stabilization Unit. Therefore, the net taxable corporate income for the fiscal year ending June 30, 1944, is calculated as follows: (a) net take on the basis of Deputy Collector Mooser's findings (before administrative salaries) \$25,630; (b) administrative salaries allowed by S. S. Unit, \$19,000; net taxable income, \$6,620.”

Q. Now does that refresh your recollection, Mr. Busterna, that for that fiscal year you received \$6,000?

A. No, sir. [1595]

(Testimony of Bert Busterna.)

Mr. Campbell: May the record show that there has now been produced, and we will turn over to the clerk, some three cartons, purportedly containing poker sheets of the 186 Club.

Mr. Gillen: It will be practical, from my standpoint, for me to continue my examination.

Mr. Campbell: I simply want the records to show that they have been produced and we are delivering them to the custody of the clerk.

Q. Now, directing your attention to the prosecution's Exhibit 88A, which is the tax return of the 186 Club corporation for the fiscal year commencing July 1, 1944, and ending June 30, 1945, there is set forth here, Mr. Busterna, a similar statement regarding the audit made by Mr. Mooser and the formula set by him at \$70 a day, as in the other one, and in addition to that he set forth the following language:

"In 1944 the taxpayer filed an application with the Deputy Commissioner Salary Stabilization Unit for annual salaries for its officers, which has been approved, as follows: Bert Busterna, President, \$4,500; Attilio Casselini, vice-president, \$3,000; Wm. E. Kyne, secretary, \$3,600; Sylvan Lando, treasurer, \$3,000."

Attilio Casselini has an (a) in brackets and that shows Attilio Casselini resigned April 15, 1945, net salary paid during the fiscal year, from July 1, 1944, to June 30, 1945; and W. E. Kyne has a (b) behind his name and that (b) shows, "Served 7½ [1596] months, succeeded by Elmer F. Remmer, who served

(Testimony of Bert Busterna.)

during the remaining  $4\frac{1}{2}$  months at the same rate, said W. E. Kyne earning \$2,250 and Elmer F. Remmer earning \$1,350.

"The books of account for the year 1944 disclose a total net of \$20,533.15. In preparing the corporate returns, (1120 and 1121) for the fiscal year ending June 30, 1945, the corporation is reporting its total net take for the year on the same basis as that which was used by Deputy Collector Mooser, \$70 per day;  $70 \times 365$ , \$25,555. (c) However, when returns for the prior period were prepared by the Deputy, no provision was made for compensation of administrative officers. This, however, has been approved at \$14,100 per year by the Salary Stabilization Unit, as stated hereinbefore, total salaries actually paid during the fiscal year ending June 30, 1945, were \$11,100. Therefore, the net taxable corporate income for the fiscal year ending June 30, 1945, is calculated as follows: (c) net take on the basis of Deputy Collector Mooser's findings (before administrative salaries paid) \$25,550. Administrative salaries allowed by Salary Stabilization Unit actually paid by the corporation, \$11,100; net taxable income \$14,450."

Now was that brought to your attention or explained to you? [1597]      A. No, sir.

Q. Does that refresh your recollection that during that period you received salary in the sum of \$4,500, received compensation for your full time services in the 186 Club in the sum of \$4,500?

A. The only thing I got was \$5,000 a year,

(Testimony of Bert Busterna.)

whether it was from 25 per cent or anything else, I don't know.

Q. That is what you made your income tax return on?

A. That is what I returned my income tax on.

Q. Who made your return out?

A. Mr. Slater.

Q. And Mr. Slater didn't make your return out on \$25 a day, but only for the actual amount you received, is that correct?

A. That's all. I tried to explain to him and he filed my income at five thousand dollars.

Q. You gave him the information and he prepared the return and you signed it, is that correct?

A. That is right.

Q. Now, there were other officers in this corporation who did not receive a salary, is that correct?

A. You mean in the club room?

Q. Other officers of the corporation of the 186 Club?

A. Well, I don't know anything about it. Nobody received wages but me except for the rest of the help.

Q. Now, isn't it a fact that the reason the other officers didn't [1598] get any salary was because the 186 Club was so heavily laden with markers there was no more money to pay?

A. That I don't know. I can't answer.

Q. Isn't it a fact that by the end of 1946 there was something in excess of 60 thousand dollars

(Testimony of Bert Busterna.)

worth of markers or IOUs in the 186 Club instead of cash?

A. Yes, sir, there was a lot of markers, but I don't know just how much.

Q. Isn't it a fact in addition to the markers there were five thousand odd dollars in bad checks at the 186 Club?

A. There was a few bad checks, yes, sir.

Q. Do you know whether there was five thousand dollars or more?

A. No, sir, I can't recall.

Q. Do you know whether the markers were 60 thousand dollars or more?

A. I can't recall that.

Q. Would it be your recollection at the time William E. Kyne returned from the service, which was in June, 1946, that you were obligated to the 186 Club in the sum of about 35 thousand dollars for markers or IOUs?

A. I owed that money within a period of a few years up until the end of '46.

Q. Mr. Busterna, just another question or two. Your recollection is that in 1946, or the end of 1946, you owed, you said, between 30 to 35 thousand dollars, or it might have been 36 [1599] thousand, that is what you said yesterday, is that correct?

A. Yes, sir.

Q. Were the other markers from other people as large as that, if you know?

A. I couldn't say how much. There was a lot of markers.



(Testimony of Bert Busterna.)

Q. You don't recall how much?

A. No, sir.

Q. You don't recall whether another 35 thousand or 60 thousand over and above your markers?

A. I couldn't say. There were quite a few markers but I don't know just how much.

Q. One of your duties was to OK people who bet on markers, isn't that correct?

A. Yes, sir.

Q. And also OK checks in instances, is that correct?

A. That's right.

Q. The markers were treated the same as money on the account books, weren't they, on the sheets?

A. That I can't understand. It is up to the bookkeeper to explain that. They know how to carry it somehow. I don't know just how to carry it. All I know, when we run short of money we had to get it some place, so we called the office, 50 Mason Street, and informed the bookkeeper that we needed some money or Mr. Kyne, and naturally we got it, whether that day or the next day, we would give him the markers. [1600]

Q. In other words, so you could have money instead of markers?

A. You have to have cash money to work with, yes, sir.

Q. So the markers were then counted as money?

A. They were counted as money, yes.

Q. You called on 50 Mason Street quite often during the operation of that 186 Club, didn't you?

A. Well, not very often. Sometimes I would go



(Testimony of Bert Busterna.)

every day and sometimes every other day or fourth day, just depends how I had time and so on.

Mr. Campbell: I think the question was confusing, when he called—whether he was making a visit or calling for money.

The Court: I think the witness understands.

Q. You understand when I said call on Mason Street I meant that you asked Mason Street for money quite often over the period of years?

A. Well, I never had to go over there, just to bring the sheets. When I needed money I generally go up.

Q. When you took over as manager of the 186 Club, the 186 Club was already a going concern; I mean, it had been operating as a social club and card room, had it not?

A. Yes, it was in operation.

Q. And it is true, is it not, that you kept some of the employees who had worked for the earlier owner on the job?

A. That's right.

Q. And when you say that the cashiers or the bookkeepers or employees [1601] there worked out the way to keep track of the take or disbursements, it is true, is it not, that they continued with the same system as the club had been using before it was purchased by your group, isn't that so?

A. Yes, sir; there was some old-timers I kept there and they kept on using the same method as they did.

Mr. Gillen: Now, may it please the Court, that will conclude my examination at this time, with this

(Testimony of Bert Busterna.)

exception, when we have an opportunity to go through the balance of those sheets, it may be we might want to ask Mr. Busterna some further questions.

Mr. Campbell: I think possibly that should be done at this time. I have some re-direct. It would seem better to dispose of this at this time.

Mr. Gillen: It will take a little time to go through those cartons.

The Court: In the event further cross-examination might suggest to you any additional redirect, we could handle it that way, Mr. Campbell, so you may proceed with your redirect now.

Mr. Campbell: Very well.

#### Redirect Examination

By Mr. Campbell:

Q. Mr. Busterna, on occasions when you delivered the sheets and the cash at 50 Mason Street, did you also deliver the markers which had been received during that same period? [1602]

Mr. Gillen: Just a moment. I am going to object to that as having been asked and answered in direct examination and improper redirect examination. Unless I am wrong, it is my understanding that the sheets reflected the markers and naturally if the sheets were delivered, the markers would be delivered also.

Mr. Campbell: That is what I am asking for.

The Court: Objection overruled. He may answer the question.

(Testimony of Bert Busterna.)

A. I don't just know whether they kept the markers entirely in the office or whether they give them to me when I delivered the sheets.

Q. Where were the markers kept?

A. Well, the markers were kept like in one sheet.

Q. Now, were there separate individual IOUs?

Mr. Gillen: May I offer a suggestion? I think the witness is confused by the records of markers or the marker itself.

Mr. Campbell: I am attempting to bring that out.

Q. There were separate slips for each marker signed by the person who owed for it, is that correct? A. They kept one long sheet.

Q. I understand that.

A. And I don't know whether I turned in every day or every other day.

Q. By long sheet, are you referring to the entries on the poker [1603] sheet?

A. The same kind of a sheet, yes.

Q. Now, at the time a person would obtain money and put in a marker, as you say, was there an IOU which that individual signed?

A. No, sir. They carry the names just right down the line.

Q. Yes; did you have a signed acknowledgment or signed slip of paper from the player who got that money, that you advanced money to?

A. No, sir.

Q. That was entirely a matter of trust?

(Testimony of Bert Busterna.)

A. Well, entirely a matter the fellow that was supposed to be ok, all right, and they come and asked me, we want a hundred dollars' worth checks or a thousand dollars and I see fit to let them have it with the understanding they would pay that day or the next day.

Q. Now, do I understand that the sheets on which that appeared were delivered to 50 Mason Street? A. Yes, sir.

Q. Do you know what, if any, efforts were made by the people at 50 Mason Street to collect on those markers? A. Can you repeat that, please?

(Question read.)

A. I wouldn't know, sir.

Q. Do you know whether or not some of those who are shown on [1604] the poker sheets with markers made payments directly to 50 Mason Street? A. I couldn't say.

Q. Do you know yourself whether or not the markers, as shown by the poker sheets that were shown by you truthfully and correctly set forth the amount of markers?

A. To the best of my knowledge it should have been, yes, sir.

Q. Do you know that for a fact, that they are correct?

A. I would say to the best of my knowledge they should be correct.

Q. Now, with regard to the markers, where you say you advanced a player a hundred or two hun-

(Testimony of Bert Busterna.)

dred or a thousand dollars in chips, how soon ordinarily would those amounts be repaid?

A. Well, they should pay them whenever they did say they would, but most of them didn't pay.

Q. Well, what was the average in that regard?

A. Well, we got a lot and possibly kept on adding up to it. One guy would pay off and then another guy add so much.

Q. At the time these sums were advanced and further sums were advanced, I presume that you considered that the account was a reliable account, is that correct?

Mr. Gillen: Objected to as leading and suggestive and improper redirect.

The Court: It might be. Objection sustained.

Mr. Campbell: On the ground it is [1605] leading?

The Court: Leading and suggestive.

Q. Now, Mr. Gillen asked you something about having been named president of the corporation. When did you first learn that you were president of the corporation?

Mr. Gillen: Objected to as having been asked and answered yesterday on direct examination. He testified he never attended any meetings, was simply given papers to sign.

The Court: Objection overruled. He may answer the question.

A. I don't know, sir.

Q. What is your best recollection of the first time that you learned that you had been named

(Testimony of Bert Busterna.)

president?        A. I can't recall.

Q. At the time you started to work there or some time after that?

A. Well, I just can't recall it whether it was '43 or '44. I just don't know.

Q. How long did you continue to serve as president, do you know?

A. Nothing was said any more after I signed the first time. Just went on to 1947, I guess.

Q. As far as you knew, you continued to be president until 1947?

A. To tell the truth, I never paid much attention to it.

Q. I am going to show you plaintiff's Exhibit 87A, the corporation [1606] income and declared value excess profits tax return of the 186 Club for the fiscal year July 1, 1943, to June 30, 1944, and call your attention to the signature at the bottom, Attilio Casselini, president. Do you recognize Mr. Casselini's signature?

Mr. Avakian: May we have that question read?

(Question read.)

Mr. Avakian: May I see the return before the witness answers the question? I call attention to the fact that this is Attilio Casselini vice-president and not president.

Mr. Campbell: I did not catch that myself. That is correct.

Q. Do you recognize the signature of Attilio Casselini?        A. Well, I don't recognize it.

(Testimony of Bert Busterna.)

Q. Do you know whether or not he was vice-president?      A. I couldn't tell you.

Q. And the signature of William E. Kyne, secretary, do you know whether or not he was secretary?      A. I couldn't say.

Mr. Campbell: That's all.

The Court: Any further questions at this time, Mr. Gillen?

Mr. Gillen: No further questions at this time.

The Court: So you will please remain available in the event counsel desires to call you back as a witness again. [1607]

**ATTILIO CASSELINI**

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

**Direct Examination**

By Mr. Campbell:

Q. Will you state your name, please?

A. Attilio Casselini.

Q. Are you also known by another name, Mr. Casselini?      A. Dutch White.

Q. Where do you live, Mr. Casselini?

A. 56 Laurel Drive, Fairbanks.

Q. That is in California?

A. In Marin County, yes.

Q. What is your present occupation?

A. At the present time nothing.

Q. What has been your occupation in the past?

A. Restaurant business.

(Testimony of Attilio Casselini.)

Q. Are you acquainted with the defendant, Elmer Remmer? A. Yes, sir.

Q. Were you at any time associated with him in any business? A. 186 Club.

Q. And when did you become associated in that business?

A. Well, when he first went into it.

Q. When was that? A. In '43.

Q. How long were you associated in that business?

A. About two years and four months. [1608]

Q. I call your attention—I believe you were in the court room when Mr. Gillen read from Exhibit 88A, the income tax return of that corporation, which recited that you resigned on April 15, 1945—does that refresh your recollection as to the actual time you left that business?

A. I resigned in April, 1944.

Q. April, 1944? A. No, '45.

Q. Now, did you take any active part in the management of the business?

A. No, none at all.

Q. What was the nature of your interest in the business?

A. Well, he give me a working part in the business and officer.

Q. When you say "he," who do you mean?

A. Mr. Remmer.

Q. What part did he give you?

A. Well, he gave me just a little part, which I don't understand nothing about it.

Q. Do you know how much?



(Testimony of Attilio Casselini.)

A. It was one-sixth involved.

Q. Did you pay anything for that?

A. No, I paid nothing for it.

Q. Did you invest any money in it?

A. None at all. [1609]

Q. You say that was a working interest?

A. Yes, sir.

Q. Did you perform any services?

A. No. The only thing I did was to cash checks that was cashed in the club.

Q. You say you cashed checks, did you have an establishment close to the club at that time?

A. No, I had my business, I was running on Mason Street.

Q. How far was that from the 186 Club?

A. Two blocks.

Q. What was your business?

A. Restaurant business, and saloon.

Q. What was the name of the business?

A. Vanderbilt Club.

Q. Did Mr. Remmer have any interest in that?

A. No.

Q. You say the services you performed were occasionally cashing checks at your restaurant and bar?

A. Mr. Busterna used to send them up to me and I used to send them the cash there for the Club.

Q. How often did you do that?

A. Twice a week.

Q. Do you recall on the average the number and amount of checks that you cashed in that fashion?

(Testimony of Attilio Casselini.)

A. Well, they varied, some 400 to 500 hundred, some varied [1610] varied 10 to 12 hundred, some varied to 16 hundred.

Q. In cashing those checks, is that the amount of the checks or the number?

A. That is the amount of the checks.

Q. Now, in cashing those checks, how did you perform that service?

A. Well, they used to send to me and I just worked in the afternoon and he would send them up, one of the employees, and my bookkeeper used to sign it with the Vanderbilt Club stamp.

Q. With your bank stamp?

A. No, the Vanderbilt Club stamp.

Q. Then what was done with the checks.

A. Then I would go down and cash them.

Q. And would you deposit them?

A. No, I would bring them right back to the club.

Q. In the event that any of the checks were subsequently dishonored, what occurred?

A. Well, I would have to phone him and leave word to call me and I would ask him about different checks that come back and he would send the money to me.

Q. It would be made good to you?

A. Yes, sir.

Q. Do you know whether or not the 186 Club had a bank account of its own at that time? [1611]

A. I don't think so.

Q. Now, when you say you had a working one-

(Testimony of Attilio Casselini.)

sixth interest, what do you mean by working interest?

A. Well, I used to place a lot of seamen that hung around there.

Q. That is around the Vanderbilt Club?

A. Yes and naturally he knew these men were coming off the ship and asked me would I send them a card or something for the club, so I naturally did.

Q. You were to steer the customers there?

A. Yes, sir.

Q. And was that the only service you performed?

A. The only thing I done.

Q. Now, at the time you cashed these checks, to whom would you turn the cash over to?

A. I would either send it over or bring it over.

Q. I couldn't understand?

A. I either sent the money or bring it over.

Q. To whom?

A. To the cashier's office.

Q. What cashier's office?

A. At the 186 Club.

Q. Yes, or——?

A. Or I would bring it to them.

Q. How often were you on the premises?

A. I used to go in and play cards after I closed at night [1612] five or six times a month.

Q. Other than cashing checks and steering the sailors who came into your place to the 186 Club, did you perform any other duties?

A. None at all.

(Testimony of Attilio Casselini.)

Q. Now, did you at any time receive any compensation by way of salary or wages from the 186 Club?

A. Well, I was to get so much at the end of the year.

Q. Did you ever receive that?

A. I never received it. The only thing I received is my tax money.

Q. By your tax money, to what do you refer?

A. I refer that I was to get so much by the year and the money that I was to get I had to pay taxes on.

Q. Do I understand that you were given sufficient money to pay the taxes on the salary, is that correct? A. \$3,600 a year.

Q. Do I understand that you did not receive that money? A. No, sir.

Q. That is the salary itself?

A. I did not receive the salary. I received the money for the taxes on the salary.

Q. Now, were you aware that the 186 Club was incorporated?

A. Well, I was told by Mr. Kyne about 7 or 8 months after I was in there. [1613]

Q. Is that the first time you learned it was incorporated? A. That is the first time.

Q. Were you aware that you were listed as an officer of the corporation?

A. I was listed as an officer at that time, yes.

Q. When did you first learn that?

(Testimony of Attilio Casselini.)

A. About four or five months after I was in there.

Q. What officer did you hold?

A. I held vice-president.

Q. Now, did you have any certificate or written agreement or anything in writing from any one, signifying the amount of your interest, or extent of your interest in the 186 Club?

A. None at all.

Q. Now, at the time you say you resigned——

A. Yes, sir.

Q. Did you receive anything in return for your interest? A. Nothing at all.

Q. Did you continue to have any interest in the club? A. Nothing.

Mr. Gillen: What was the last question?

(Question read.)

Mr. Gillen: I think that is asking for a legal construction. I move the answer be stricken.

The Court: Motion is denied.

Q. At the time you resigned, did you turn anything over by way [1614] property or documents to any one? A. No.

Q. Now, with regard to the tax money that was paid you while you were there, in what form did you receive that? A. In bills.

Q. Currency? A. Currency, yes.

Q. Who gave you that? A. Mr. Kyne.

Q. Where did he give it to you?

A. At my office.

(Testimony of Attilio Casselini.)

Q. At the Vanderbilt Club? A. Yes.

Q. Do you know who the other officers of the corporation were?

Mr. Gillen: Just a moment—the record is the best evidence of that, may it please the Court, and it is incompetent, irrelevant and immaterial whether he knew or not.

The Court: Objection is overruled. He may answer the question.

A. Yes, I do.

Q. Who were the other officers?

A. Mr. Lando.

Q. What office did he hold?

A. I think he was treasurer.

Q. Yes. [1615] A. And Mr. Busterna.

Q. What office did he hold?

A. He was president.

Mr. Gillen: This is all, your Honor, set forth in the returns. I don't know why he should be calling on a witness on the stand to try to remember the officers, when it is in the record, introduced by the government. It is just a waste of time.

The Court: Objection overruled.

A. And there are two I didn't know are implicated, Mr. Nelus and some other fellow, a Mr. Kopestake.

Q. You say you didn't know they were implicated, what do you mean?

A. I didn't know they were in the club interest.

Q. When did you first learn that Mr. Nelus or Mr. Kopestake had any interest in it?

(Testimony of Attilio Casselini.)

Mr. Gillen: Objected——

The Court: Overruled.

A. About five or six months.

Q. Five or six months from when?

A. The time when we started.

Q. Did Mr. Remmer have an interest, do you know?      A. Yes, sir.

Q. Do you know what the amount of his interest was?      A. I don't know. [1616]

Q. Did you know the extent of the interest of any of the other parties?      A. No, I didn't.

Q. Now, do you know whether or not books and records were kept of the corporation?

A. Well, I wouldn't know that.

Q. Did you ever see any books or records?

A. No, never did.

Q. Were you familiar with the daily poker sheets?      A. No.

Q. Did you ever see them?

A. Well, I saw the red sheet Mr. Busterna had. I used to ask him occasionally——

Q. What was the red sheet?

A. Sheet they had all the IOUs on.

Q. Did you see daily sheets showing the take and the payouts?      A. No, never did.

Q. Now, I am going to show you plaintiff's Exhibit 87A, the corporation income declared value excess profits tax return, July 1, 1943, to June 30, 1944, and ask you if that is your signature?

A. Yes, this is mine.

Q. I call your attention to the printing, "vice"

(Testimony of Attilio Casselini.)

immediately before the "president," is that your printing?      A. Yes, sir. [1617]

Q. Now, did you prepare this return?

A. No, I didn't.

Q. Who did, if you know?

A. I wouldn't know. I think some boy by the name of Schrader or something like that. I didn't even know him.

Q. Are you familiar with the figures set forth herein?      A. No, I wasn't.

Q. It shows on here that this was signed in the presence of the Deputy Collector Louis H. Mooser, do you recall him?      A. Never knew him.

Q. Do you recall who was present at the time you signed this return?

A. At the time I signed it I think Mr. Kyne was there.

Q. Yes; any one else there?

A. Not that I know of.

Q. What is that?      A. No.

Q. Now, there is attached to this return Schedule 1, document which has been read here this morning, setting forth your salary as four thousand dollars, did you ever receive that? Did you see that at the time you signed the return?

A. No, I didn't.

Q. Did you read the return at the time you signed it?      A. No, I never.

Q. Did you ever, as vice-president or as holding an interest [1618] in the 186 Club, attend any meeting of the officers?      A. None whatever.



(Testimony of Attilio Casselini.)

Q. You say never ever?

A. None whatever.

(Jury and alternate jurors admonished and short recess taken at 11:00 o'clock.)

11:10 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. CASSELINI

resumes the witness stand on further

Direct Examination

By Mr. Campbell:

Q. Now, Mr. Casselini, at the time you left the 186 Club, did you submit any letter of resignation or any document of any kind?

A. None whatever.

Q. Did you at that time inform anyone that you were leaving?

A. Yes, Mr. Busterna, when I told him.

Q. At the time you left?

A. I was leaving.

Q. And you recall when that was?

A. That was in April, about the middle of April.

Q. Of 1945? A. Yes.

Q. And after that did you have any connection whatever with the 186 Club? [1619]

A. None whatever.

(Testimony of Attilio Casselini.)

Mr. Campbell: I think that is all.

Cross-Examination

By Mr. Gillen:

Q. Mr. Casselini, your name of Dutch White you carried since you were a boy?

A. That is right.

Q. That is because you happened to have very blonde hair, they used to call you Dutch White?

A. When I was a young fellow, yes.

Q. Now, aside from the Vanderbilt Club, which you have mentioned here, you formerly were the owner of what is called Charles Fashion Restaurant on O' Farrell Street, San Francisco?

A. Yes, sir.

Q. And you sold your interest out there some time ago?

A. Sold out about two years and three months ago.

Q. At the Vanderbilt, which was described by you as restaurant bar on Mason Street, two blocks away from the 186 Club, you say that you had the patronage of a lot of merchant seamen, is that correct?

A. Yes.

Q. And they used to ask you a good place to play cards and you would direct them to the 186 Club?

A. Yes, sir.

Q. You used to go there yourself to play cards?

A. Five or six times a month I used to [1620] play.

Q. Now, you said, Mr. Casselini, that you

(Testimony of Attilio Casselini.)

weren't familiar with the poker sheets, but that you did see a sheet with a lot of IOUs on it, is that correct?      A. That is correct.

Q. And you inquired about the IOUs on occasions, isn't that so?      A. I did.

Q. Now, as a matter of fact, isn't it true that the reason you inquired about the IOUs and the reason you finally resigned in '45 was because you were told by Mr. Busterna that there were no profits to pay your salary?      A. Right you are.

Q. And you decided not to be bothered any more and you offered your resignation, isn't that correct?      A. That's right.

Q. And were you shown the number of markers in explanation of why there was no money to pay your salary?

A. Well, they did for about six months, they showed me every two or three weeks.

Q. Did you check the markers yourself to determine in your own mind or get any idea approximately how many markers there were or what they amounted to?      A. No, I didn't.

Q. Were there a good many of them?

A. Quite a few of them. [1621]

Q. Now, Mr. Campbell asked you when you did withdraw from the corporation whether or not you turned in any documents, do you recall his question?      A. I did not.

Q. Now, you knew, did you not, that a social club of this nature, under the laws of California,

(Testimony of Attilio Casselini.)

has no stock? There is no stock issued to the stockholders? A. That's right.

Q. Now, you say that the returns for the corporation were prepared by some man by the name of Slater? A. Shrader or something.

Q. Did you think Mr. Slater was a lawyer?

A. He was a lawyer, I think, for the 186 Club.

Q. As a matter of fact, aren't you referring to Mr. Slater, the public accountant?

A. Public accountant, that's right.

Q. Now, when you signed, Mr. Campbell asked you if you signed the returns as vice-president of the corporation in the presence of any one?

A. I did.

Q. And your answer was that you signed it in the presence of Mr. Kyne. You don't recall that there was anybody else present? A. No.

Q. Now, Mr. Mooser, I note, in prosecution's Exhibit 87A, has signed as the officer administering the oath and on the 15th [1622] day of November you appeared before L. A. Mooser, Jr., a Deputy Collector of Internal Revenue. You signed that you appeared before him—you don't recall his being present when you signed?

A. No, I don't recall him.

Q. Did you know that the 186 Club had initially started out as a partnership and due to the fact that Mr. Mooser said it would have to make a return as a corporation, that is why officers were elected and corporate officers were put in office?

A. Well, I was told by Mr. Kyne at the time.

(Testimony of Attilio Casselini.)

Q. Did you know that Mr. Mooser had audited the books and had stayed around the 186 Club for a period of approximately a month to check the average of the business being done?

A. Mr. Kyne told——

Mr. Campbell: I will object to conversation.

The Court: Listen to the question and answer the question. Do you know? If you do, say yes, if you don't say so.

Q. Do you know of your own knowledge?

A. No, I didn't.

Q. Did you ever meet Mr. Mooser?

A. No, I didn't.

Q. Did you ever see Mr. Mooser around the 186 Club? A. I never did. [1623]

Q. You didn't know him to see him?

A. No.

Q. So if he was there, you wouldn't know him?

A. No.

Q. When you refer to Mr. Nelus and Mr. Kopestake, that was Jesse Kopestake, was it not? Did you know Mr. Kopestake? A. Yes, I did.

Q. And Mr. Nelus, did you know him?

A. Yes, I did.

Q. You said that you learned some time after you became identified with the organization that they also had an interest, is that correct?

A. Yes.

Q. And you didn't know what the extent of their interest was? A. No.

Q. Did it come to your attention that their in-

(Testimony of Attilio Casselini.)

vestment was paid off to them out of the proceeds and profits of the 186 Club? Did that come to your attention?      A. I wouldn't know.

Q. You didn't know that they had withdrawn and that they had been paid off the cash investment that they had made?      A. I didn't know that.

Q. Now, Mr. Casselini, who was it that made out your individual income tax return?

A. Well, it was my bookkeeper at the time, but then later on [1624] Mr. Hubner took care of it.

Q. Mr. Hubner is the tax lawyer in San Francisco?      A. Yes, sir.

Q. Conrad Hubner?      A. That is right.

Q. You say initially your bookkeeper made out your individual income tax return?      A. Yes.

Mr. Campbell: Objected to as immaterial as to his individual tax return.

The Court: He has already answered the question. The answer may stand.

Q. Who was the bookkeeper that made out your income tax return, your individual return?

A. I can't think of his name.

Q. Was he the person who kept—

A. Keep books for the Vanderbilt Club.

Q. When you first became identified with the 186 Club, did he make out your return?

A. Yes, sir.

Q. This bookkeeper?      A. Yes.

Q. How many years did he make out your return?      A. Two years.

Q. So that the time while you were identified

(Testimony of Attilio Casselini.)

with the 186 [1625] Club your own bookkeeper made out your returns, is that correct?

A. That is right.

Q. It is true, is it not, that he told you where you were credited with salary and entitled to salary, that you were required to pay taxes on that, whether you received it or not?

Mr. Campbell: I object—it is calling for hearsay.

The Court: Let me have the question.

(Question read.)

The Court: Objection sustained.

Q. Well, did you ever inquire as to why you had to pay income taxes on a salary that you didn't receive?

Mr. Campbell: Objected to as immaterial, incompetent.

The Court: Objection overruled. Answer the question.

A. Yes, he had told me——

Mr. Campbell: Just a minute—I am going to object.

The Court: Answer that yes or not. It has been answered.

Q. Did you inquire as to why you had to pay an income tax on salary even though you did not receive the salary? A. Yes, I did.

Q. Were you informed the reason was that under the law you would have to pay where you were credited with salary or credited with profits or dividends, whether you received them or not?

(Testimony of Attilio Casselini.)

A. Yes, that's right. [1626]

Mr. Gillen: I think that is all.

### Redirect Examination

By Mr. Campbell:

Mr. Campbell: I have some redirect, but first I ask that some exhibits be brought down. While we are waiting for them, I am going to ask to have given an identification number this certified document dated October 26, 1951.

Clerk: 150.

Mr. Campbell: I will ask a question or two while I am waiting for the return.

Q. Mr. Casselini, referring again to plaintiff's Exhibit 87A, the corporation income and declared value excess profits tax returns for the fiscal year July 1, 1943 to June 30, 1944, for the 186 Club, on which you have identified your signature, I call your attention appearing on the 3rd sheet under the heading, "Questions": Question 10: "Is this return made on the basis of cash receipts and disbursements," and the typewritten answer, "Yes." Now at the time you say you conferred with whoever it was told you you had to report the salary whether or not you received it, do you know whether or not this return and that statement of cash receipts and disbursements as the basis for filing of the return was before you?

A. Was before you?

Q. The person who told you that you had to re-



(Testimony of Attilio Casselini.)

port the salary whether you received it or not?

Mr. Avakian: Just a moment. That is objected to, your [1627] Honor, as incompetent, irrelevant and immaterial, because the material point there would be whether Mr. Casselini's return was prepared on cash accrual basis, not whether the corporation's return is on a cash and accrual basis.

The Court: Let me have the question.

(Question read.)

Q. Was before him, the person giving that advice.

The Court: I do not understand the question. I don't see how the witness can understand it.

Mr. Campbell: Very well.

Q. Mr. Casselini, Mr. Gillson asked you if you were advised that you should report on your individual return the salary from the 186 Club whether or not you received it. Do you recall that?

A. Yes, sir.

Q. Now, who was it that gave you that advice?

A. My bookkeeper.

Q. Now, at the time that he gave you that advice, do you know whether or not he had seen the returns as filed by the 186 Club?

Mr. Avakian: Now, your Honor, we make the same objection I made that the material thing would be whether Mr. Casselini's return was on cash or accrual basis, not whether the corporation's was. He would report his income on one

(Testimony of Attilio Casselini.)

basis or the other, regardless of what the corporation did.

The Court: Let me have the question. [1628]

(Question read.)

The Court: You may answer the question.

A. He had not.

Q. Now, do you recall, Mr. Casselini, whether or not the salary as set up in the 186 Club returns was reported by you individually on your original returns or on an amended return?

A. I do not remember.

Q. For the purpose of refreshing your recollection, I am going to show you what purports to be your 1943 individual income tax return.

Mr. Avakian: Your Honor, we object to this method of attempting to refresh his recollection for the reason he is attempting to show a 1943 return, whereas the testimony is a corporation tax return showed a salary to him from the corporation for the first time in 1944 and the corporation returns specifically says that no salary was set up for the year 1943, so his individual 1943 return would be completely immaterial.

The Court: There is nothing before the court.

Mr. Avakian: He is attempting to show the witness——

The Court: He has a right to show the witness anything.

Mr. Gillen: He said to refresh his memory.

The Court: There is nothing before the Court.

(Testimony of Attilio Casselini.)

Mr. Campbell: I would like to have this given a number for identification, your Honor.

Clerk: 151. [1629]

Mr. Gillen: May I ask counsel's statement, for the purpose of refreshing his memory, be stricken from the record. May we have it read?

The Court: It may stand. Read the question to the witness.

(Question read.)

Q. (Continuing.) And will ask you whether or not on your return of income tax for 1943, your original return, if you reported any salary from the 186 Club?

Mr. Avakian: Just a moment. I object to that, your Honor, as not proper re-direct, because there is nothing in the cross-examination as to salary for 1943. The only salary talked about in cross-examination or direct examination was for the years 1944 and 1945 and it is only for those years that the tax income returns show any salary, and moreover the tax returns specifically state that no salary was set up for the year 1943. That is not a proper re-direct question.

The Court: Objection overruled. Answer the question. A. I don't remember.

Q. Let me ask you this, is that your signature?

A. Yes, this is my signature.

Mr. Campbell: I am going to offer this in evidence as government's Exhibit 151.

The Court: Admitted, 151.

(Testimony of Attilio Casselini.)

Q. Do you recall whether or not subsequently in 1943 you filed [1630] an amended tax return?

A. What is that?

Q. Do you recall whether or not you later filed an amended 1943 individual return?

A. I do not remember.

Mr. Campbell: May this document be numbered the same number A for identification, 151A for identification?

Q. I am going to show you government's Exhibit 151A for identification and ask you if that is your signature? A. Yes.

Q. I will ask you to examine this return, which purports to be for the year 1943 and ask you whether or not that refreshes your recollection on the matter of whether or not on the amended return you reported salary from the 186 Club for the year 1943? A. Well, I didn't get any salary.

Q. I know, but that is not the question.

(Question read.)

Mr. Avakian: Just a moment. I offer the objection that the document is the best evidence. It hasn't been offered in evidence, so no statement from it should be read.

Mr. Campbell: In view of counsel's statement, I will offer it in evidence as government's 151A.

The Court: It may be admitted in evidence, 151A.

Mr. Campbell: I would like to read from government's [1631] 151, the individual income tax

(Testimony of Attilio Casselini.)

return of Attilio Casselini, for the year 1943, which bears receipt and stamp of the Collector of Internal Revenue of April 29, 1944, under the heading of "Income," item appearing as (9) Income from partnerships, \$8,221.50, referring to Schedule C-3. Schedule C-3 contains no information. Exhibit 151, amended individual tax return for the calendar year 1943 of Attilio Casselini, reports dividends four thousand dollars, income from partnerships \$6,221.50, and under the heading of "Income from Partnerships" "See Schedule C-3," and on C-3 is mentioned Club Vanderbilt \$6,221.50. Nothing further set forth.

Mr. Avakian: May we inquire whether 151A shows anything about salary in the amended return?

Q. Mr. Casselini, the item of dividend for four thousand dollars, will you state to what that refers?

A. Well, I don't know.

Q. Did you receive dividends from any source for that year? A. None whatever.

Q. Do you know what the four thousand dollars as set forth on your return represents?

A. I do not.

Q. Who prepared this return for you?

Mr. Gillen: Objected to as asked and answered.

The Court: Objection overruled.

A. At the present time I couldn't know. [1632]

Jury and alternate jurors admonished and noon recess taken at 11:50.

January 3, 1952, 1:30 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. CASSELINI

resumes the witness stand on further

Redirect Examination

By Mr. Campbell:

Q. Mr. Casselini, I am going to show you defendant's Exhibit "P," which purports to be a partnership return income for the calendar year 1943 of the 186 Club, which is signed by William E. Kyne, and ask you if you have ever seen that document before? A. No.

Q. Do you recognize the signature of Mr. Kyne?

A. No, I don't.

Q. This document recites under partner share of income, credits Attilio Casselini, \$2,000. Did you receive any such sum in 1943? A. None at all.

Mr. Campbell: You may cross examine.

Mr. Gillen: No further questions, your Honor.

(Witness excused.)

Mr. Campbell: May I inquire through the Court, your Honor please, in regard to the witness Busterna, whether or not he can be released also?

Mr. Golden: The situation is the records we asked for [1633] and received, as your Honor noted, are three full cartons. It has been physically

impossible to do anything on them. We suggest he may be excused and I am sure Mr. Campbell can agree if we want him back he may be recalled, is that satisfactory?

Mr. Campbell: Yes.

The Court: Mr. Busterna, you are going to be excused but you will be subject to call by either side. You may be excused with that understanding.

RODRICK PERKINS

a witness on behalf of the plaintiff, having been previously sworn, was recalled and testified as follows on

Direct Examination

By Mr. Campbell:

Q. Mr. Perkins, in connection with your employment by Mr. Graham and Mr. McKay, did you also have as part of your duties the making of any entries in the books of the Cal-Neva, Inc.?

A. Yes, sir.

Q. I am going to show you plaintiff's Exhibit 146 for identification, and ask you to examine it and state whether or not, in the course of your duties, you made entries in that book? Do you find entries you made there?

A. Yes, sir, these, I made and here.

Q. Now, what is that book that you have?

A. General ledger of Cal-Neva, Inc.

Q. That is general ledger of the Cal-Neva?

A. Yes, sir. [1634]

Q. And you recognize it as such?

(Testimony of Rodrick Perkins.)

A. Yes, sir.

Mr. Campbell: This will be offered in evidence as government's 146.

Mr. Avakian: Your Honor, as a matter of clarifying through this witness, the prosecution is offering the entire document and not simply the entries he made?

Mr. Campbell: No, I am offering the entire document.

The Court: Admitted in evidence, 146.

Mr. Campbell: You may cross-examine.

#### Cross-Examination

By Mr. Avakian:

Q. Mr. Perkins, I believe you stated that you made some of the entries in this general ledger, plaintiff's Exhibit 146? A. Yes, sir.

Q. And did you do that in the course of employment by the Cal-Neva, Inc.? A. Yes, sir.

Q. During what period of time were you employed by that corporation?

A. I first did the work in 1930 and I think I left it in '35 and went back again in 1939 or 1940, I am not sure, and I left in 1941, although there are probably some entries in 1942.

Q. Were you employed by Cal-Neva subsequently to 1942?

A. I think that in the wintertime I made out checks and paid a few bills. [1635]

Q. During what years, Mr. Perkins?



(Testimony of Rodrick Perkins.)

A. I think it was in 1942 and 1943, but I am not positive about it.

Q. And your duties, during the time you were employed there, were of a bookkeeping nature, is that correct?

A. Yes, sir.

Q. Did you keep records other than this general ledger, which is prosecution's Exhibit 146?

A. What do you mean by records?

Q. Well, did you do any other bookkeeping besides what is reflected in these books?

A. I do not think so.

Q. The general ledger which you have identified, prosecution's Exhibit 146, contains certain accounts for the owners of the stock of the corporation, does it not?

A. I think it does.

Q. I call your attention, Mr. Perkins, to several sheets under the general designation of "Assets," entitled J. C. McKay account No. 8; W. J. Graham account No. 9; and E. Remmer account No. 10, will you examine those three sheets and state to us what each account represents?

Mr. Campbell: Objected to on the grounds that the records speak for themselves, except as to such entries as this particular witness may have made.

The Court: Read the question. [1636]

(Question read.)

The Court: Objection overruled. You may answer the question.

A. Well, there are various items for each one of these gentlemen, various amounts of charges against their personal account.

(Testimony of Rodrick Perkins.)

Q. Well, let us take the first one, the sheet that relates to Mr. McKay, what is the first entry on that sheet?

A. The first sheet shows Lambeth for radio repairs, \$7.90.

Q. Does that represent a payment made by Cal-Neva on behalf of Mr. McKay in that amount?

Mr. Campbell: If he knows. The books speak for themselves.

The Court: State that if you know.

A. Yes, I think that is what it does.

Q. With your experience as a bookkeeper, that is what that entry means to you, is that correct?

A. Yes.

Q. Is that then charged on the books of account against Mr. McKay, that amount?

A. Yes, that is what is charged.

Q. That means then, does it not, Mr. Perkins, that on account of that transaction Mr. McKay owes the Cal-Neva corporation the amount you just read, seven odd dollars?

Mr. Campbell: Objected to as calling for his conclusion and opinion. The man has not been qualified as an expert; it [1637] is not within the scope of direct examination.

The Court: Well, during the course of this trial we have had many exhibits here and permitted the custodian bookkeeper to explain items. I think it is a good thing to do. Objection will be overruled.

(Question read.)

(Testimony of Rodrick Perkins.)

A. Yes, that is what it means.

Q. Are there a number of entries in that account showing payments made by Cal-Neva on behalf of Mr. McKay?

A. Yes, sir.

Q. And is the entry made showing the amount owed by Mr. McKay to Cal-Neva on account of each of these transactions?

A. Well, there are various credit items.

Q. What do you mean by credit items?

A. Well, Mr. McKay, for instance, would pay for some items that belonged to Cal-Neva. Then his account would be credited with the amount of money he spent on behalf of the corporation.

Q. Can you give us an example from the book before you of one of those?

A. There is an entry in the amount of \$14,606.95.

Q. What is the date of that?

A. Date is September 30, 1937. That was for money spent by Mr. McKay for furniture and fixtures, namely, a safe and construction account of 13 thousand dollars and gambling equipment and publicity of 25 thousand. Mr. McKay spent that money for improvements. [1638]

Q. That, then is a transaction in reverse—transaction of Mr. McKay making payment on behalf of the corporation, is that right?

A. Yes.

Q. So then that reduces the amount he previously owed the corporation on the books, is that right?

A. That is right.

Q. And is that a running account that reflects

(Testimony of Rodrick Perkins.)

transactions of that nature from time to time as they appear?

A. This account goes from '37 to '39.

Q. Is it continued on the next page?

A. No, that is all for Mr. McKay.

Q. Isn't the final entry in Mr. McKay's account in June of 1946?

A. Yes, that's true. The final entry was in June of 1946.

Q. And in connection with each of the transactions, does this account show the balance of the account after each transaction?

A. Not after each month. After a series it does.

Q. At periodic intervals, is that correct.

A. Yes.

Q. And in every instance where there is a balance entered there prior to June of 1946, would you state whether the balance shows an obligation owing by Mr. McKay to Cal-Neva or an obligation owing by Cal-Neva to Mr. McKay?

Mr. Campbell: Objected to as immaterial. [1639]

The Court: Objection overruled. Answer the question.

A. It looks like Mr. McKay owes the corporation.

Q. That is true in every instance where the balance is entered?

A. Well, in one part of 1947 there is a credit balance. The rest of them are debits.

Q. By debit balance you mean that Mr. McKay owed the corporation? A. Yes.

(Testimony of Rodrick Perkins.)

Q. When was that account cleared to the zero balance? A. In June of 1946.

Q. And was a payment made by Mr. McKay to or on behalf of Cal-Neva at that time to balance the account?

A. It shows check record 37, \$3,602.04, but I can't find the check at this time.

Q. At any event, was there a payment there to or on behalf of the corporation made by Mr. McKay?

A. It was made to Mr. McKay probably by the corporation.

Q. Immediately prior to that entry, didn't Mr. McKay owe the corporation that amount of money?

Mr. Campbell: I submit, this is all immaterial.

The Court: Well, I don't think it is proper cross-examination, but I have not heard any objection on that ground.

Mr. Campbell: I will object on that ground.

Mr. Avakian: May I be heard on that. [1640]

The Court: I do not want to rule that out now at this late state where you have gone into it so far. I can't see where any of it is proper and the witness identified the record.

Mr. Campbell: I thought I made that objection.

The Court: I didn't hear it.

Mr. Campbell: I thought I had. If not, I will make it at this time.

The Court: Well, it will be overruled.

Q. Let us take the entry just prior to June of 1946, Mr. Perkins, what does it show?

(Testimony of Rodrick Perkins.)

A. A balance of \$3,602.04.

Q. A debit balance against Mr. McKay of \$3,602.04 to the corporation, is that correct?

A. Yes.

Q. Since that debit balance was wiped out and reduced to zero by entry of June, 1946, does that not mean that in June of 1946, Mr. McKay made payment of \$3,602.04, either to the corporation or on behalf of the corporation?

Mr. Campbell: Objected to as argumentative. The records speak for themselves.

The Court: It is. Objection sustained.

Q. Can you tell us what that entry means?

Mr. Campbell: Objected to as asked and answered.

The Court: Objection overruled. [1641]

A. I didn't make the entry myself, but here is the original entry, if you want to look at it.

Q. Will you tell us what it is?

A. It just says, "Credit accounts receivable Remmer, McKay and Graham," with the various items to those accounts.

Q. Will you turn to the next sheet in that ledger, namely, the account of Mr. Graham. Have you found that? A. Yes.

Q. And does that likewise reflect the number of transactions in which the corporation advanced money to or on behalf of Mr. Graham and in which Mr. Graham in some instances advanced money to and on behalf of the corporation?

Mr. Campbell: Objected to as opening a new

(Testimony of Rodrick Perkins.)

subject matter not within the scope of the subject matter.

The Court: Objection sustained.

Mr. Avakian: I would like to be heard on that because we think it is important.

The Court: I can't see where it is proper.

Mr. Avakian: I would like to explain where I think it is important.

The Court: I do not think it is. I do not want to take up the time.

Mr. Avakian: Isn't your Honor going to let me explain why I think it is. It is an exhibit that the government introduced. [1642]

The Court: The ruling will stand.

Q. Would you refer to the next account, that of Mr. Remmer. Have you found that?

A. Yes, sir.

Q. And does that account of Mr. Remmer's contain a number of entries showing transactions between Cal-Neva and Mr. Remmer?

Mr. Campbell: Same objection.

The Court: Same ruling.

Mr. Avakian: I would then request, for the record, an opportunity to explain why we think this is material.

The Court: My view of it is make this gentleman your own witness.

Mr. Avakian: Your Honor, they presented these books.

The Court: The ruling will stand.

Mr. Avakian: Your Honor, doesn't any ques-

(Testimony of Rodrick Perkins.)

tion relating to this book relate to direct examination, because that is in evidence?

The Court: The ruling will stand. The ruling will stand.

Q. And do I understand your Honor——

The Court (Interceding): I am not going to make any more explanation. I said the ruling will stand. Now, don't pursue it any further.

Mr. Avakian: Might I ask another question?

The Court: Go ahead and ask.

Mr. Avakian: Of your Honor? [1643]

The Court: No, I am not on the stand.

Q. Are there entries in prosecution's Exhibit 146 which show loans made by Cal-Neva Corporation to Mr. Remmer during the year 1944, 1945, and 1946?

Mr. Campbell: Same objection.

The Court: Same ruling.

Mr. Avakian: In view of your Honor's ruling, I would respectfully like to move that prosecution's Exhibit 146 be stricken from the evidence on the ground that we are not being permitted to cross-examine and if we are not being permitted to cross-examine on the theory the exhibit is not within the scope of direct examination, it should not be in evidence.

The Court: Motion denied.

Q. Mr. Perkins, did you yourself make any entries in that book relating to transactions between Mr. Remmer and the corporation?

A. I made some of them.



(Testimony of Rodrick Perkins.)

Q. Would you identify for me the entries which you made of that nature?

A. I have one here on the 7th of November, 1938.

Q. What is that entry?

Mr. Campbell: Pardon me. That is objected to as being not within the scope of the direct examination.

The Court: Objection sustained.

Mr. Avakian: May I be heard on that, your Honor?

The Court: No, sir. [1644]

Q. Are there other entries there reflecting transactions, entries which you made, reflecting transactions between Mr. Remmer and the corporation?

Mr. Campbell: Objected to as not within the scope of direct examination.

Mr. Avakian: He was questioned on that, as to whether he made some entries in that book.

The Court: You may answer that question, yes or no. A. Yes.

Q. Will you find the next entry which you made.

Mr. Campbell: Is that a question?

Mr. Avakian: I am asking him to find it. When he finds it, I will put the question to him.

A. Yes, sir

Q. Will you state what that reads?

Mr. Campbell: Objected to as not within the scope of direct examination.

The Court: Objection sustained.

Q. Are there other entries which you made

(Testimony of Rodrick Perkins.)

reflecting transactions between Mr. Remmer and the corporation?      A. Yes, sir.

Q. Would you state what the next entry is?

Mr. Campbell: Objected to as not within the scope of direct examination.

The Court: Objection sustained. [1645]

Mr. Avakian: May it be understood, your Honor, that I am being precluded from inquiring—

The Court (Interceding): No, I only make rulings when the occasion arises.

Mr. Avakian: Very well.

Q. Will you then find the next transaction? Let me know when you have found it, Mr. Perkins.

A. I have found it.

Q. Would you first give me the date of it?

Mr. Campbell: Objected to as not within the scope of direct examination.

The Court: Objection sustained.

Q. Will you state what the entry is?

Mr. Campbell: Same objection.

The Court: Objection sustained. I think we have enough.

Mr. Avakian: That was my suggestion.

The Court: It is my suggestion you desist from pursuing this matter any farther.

Mr. Avakian: I just wanted to make the record, your Honor.

The Court: You have already made the record.

Mr. Avakian: May I have prosecution's Exhibit 146, Mr. Perkins. Your Honor, at this time I would

(Testimony of Rodrick Perkins.)

like to read to the jury certain portions of this exhibit.

The Court: You may read it. [1646]

Mr. Avakian: Reading to the jury from the section of Exhibit 146 entitled "Assets," "Account No. 8, J. C. McKay," under date of May, 1937, balance forwarded \$2,687.92; August 2, 1937, Lambert for repair radio, posting reference D-6, charge \$7.90; August 27, 1937, Cash, posting reference D-7, charge of \$5,000; September 30, 1937, posting reference J-2, a credit of \$14,606.95 and a credit balance of \$6,911.13. On September 30, 1937, posting reference D-9, a charge of \$1520. September 30, 1937, posting reference D-9, a charge of \$7986.95, with a debit balance of \$2595.82. On September 30, flowers for Blight funeral, posting reference D-12, \$25.75. September 30, 1937, King's fire extinguisher, posting reference D-12, \$6.25, and a debit balance of \$2627.82.

With the Court's permission, I am going to read only some of the entries that intervene here, unless counsel desires to have me read them all. Do you care to look at this, counsel, first to determine?

Mr. Campbell: No.

Mr. Avakian: On October 31, 1937, a debit balance of \$6895.82. Several entries later on, August 26, 1938, a debit balance of \$11,395. Several entries below that on May 13, 1938, a debit balance of \$16,037.02. Several entries below that on January 31, 1939, a debit balance of \$3,455.67. A number of entries below that on September 30, 1939, a debit

(Testimony of Rodrick Perkins.)

balance of \$3,602.04, and in the next entry, which is final entry of [1647] this account, June, 1946, showing a credit of \$3,602.04, with a balance of zero.

From the next sheet in prosecution's Exhibit 146, entitled, "W. J. Graham Account No. 9," I would like to read certain of the entries. On May 1, 1937, balance forwarded \$2,817.26. On October 31, 1937, a debit balance of \$6,904.01. On August 29, 1938, a debit balance of \$11,404.01. Skipping a number of entries and going to November 30, 1942, a debit balance of \$4,002.30, and a final entry following that, June 30, 1946, a credit of \$4,002.30, leaving a balance of zero.

Turning next to the next sheet, which is entitled "E. Remmer Account No. 10." The first entry is May 1, 1937, balance forwarded, \$5,292.40. Skipping a number of entries and going to April 30, 1943, a debit balance of \$10,652.77. Skipping a number of entries and going to December 31, 1944, a debit balance of \$17,886.66. April 30, 1945, a credit of \$24.98. Another entry April 30, 1945, a credit of \$7,500. Another entry on April 30, 1945, showing a charge of \$8,000 and a debit balance at that time of \$18,361.68. On July 31, 1944, a charge of \$2,000 and on August 31, 1944, a charge of \$5,000, leaving a debit balance on that date of \$25,361.68. On April 3, 1946, a charge of \$2,500. On April 30, 1946, cash and charge of \$51,086.34 and on the same date, April 30, 1946, by checks included in cash, showing a credit of \$2215.69, and a debit balance on that date of \$76,732.33. On April 30, 1946,

(Testimony of Rodrick Perkins.)

a charge [1648] of \$7,000 and debit balance of \$83,732.33. June 30, 1946, a credit of \$83,732.33, leaving a balance at that time of zero. September 30, 1946, a credit of \$50,000. October 31, 1946, a credit of \$47,300. March 31, 1947, a credit of \$5,000. July 31, 1946—I am sorry—under heading of July 31, 1947, but under column description year 1946 is entered there is charge of \$7,724.11. Under date of August 30, 1947, with description 1946, there is a charge of \$7,724.11. Under date of September 30, 1946, Graham and McKay \$100,000 as a charge. January 31, 1947, E. Remmer charge \$40,000. April 30, 1947, charge \$15,000, with a balance shown on that date, a debit balance, of \$68,148.22. April 30, 1947, a credit of \$20,000. April 30, 1947, a charge of \$97,300. April 30 of 1947, a credit of \$34,705.83, leaving a debit balance of \$110,742.39. On April 30 of 1948, a credit of \$100,000, leaving a debit balance on that date of \$10,742.39, and that is the final entry in this account.

May I ask the Court's permission to reconsider its ruling and permit me to examine?

The Court: The ruling will stand. Any further questions?

(No further questions.)

(Witness excused.)

Mr. Campbell: At this time we will offer into evidence plaintiff's Exhibit 150.

Mr. Golden: Your Honor, this exhibit is being

offered [1649] without any witness on the stand and we would like to be heard on the proposition in the absence of the jury.

The Court: Very well. You make an objection, do you?

Mr. Golden: Yes, your Honor.

The Court: The jury will be excused.

(Jury and alternate jurors admonished and excused at 2:20.)

(In the Absence of the Jury.)

(NB 331—pp. 31-48.)

3:15 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

Mr. Campbell: At this time, if the Court please, I wish to offer in evidence the exhibits which have been marked government's Exhibits 150 and 150A for identification.

The Court: They will each be admitted in evidence, of course subject to the objections. The record will show the proceedings we have had in regard to them.

Mr. Campbell: If I may read very briefly from these documents.

The Court:

Mr. Campbell: Plaintiff's Exhibit 150 is document which is headed "Certified October 22, 1951." The Certificate sets forth: (Reads) All of which is set

forth under the seal of the Treasury Department and there are attached some ten pages, [1650] setting forth some information, giving names and numbers of bonds, places of issue, serial number of bond, denomination of bond and if bond has been redeemed by the United States, the date of the redemption. Plaintiff's Exhibit 150A is also certified under the seal of the Treasury Department of the United States and contains figures of a large number of bonds, United States Savings Bonds, of the original bonds, bearing also the date of redemption of the bond, amount paid and the paying officer, in most instances banks, bearing the endorsement of the person in whose name the bonds were issued, either that of Elmer Remmer or Helen Remmer. Without reading the individual bonds, and subject to correction, these exhibits would show that at cost price there were outstanding at the end of each of the years indicated cost price of bonds in the following amounts, as shown by these exhibits: as of December 31, 1942, \$1200; December 31, 1943, \$562.50; December 31, 1944, \$10,481.25; December 31, 1945, \$17,081.25; December 31, 1946, \$17,081.25.

FRANK CAVANI,

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination

By Mr. Campbell:

Q. Will you state your name please?

A. Frank Cavani.

(Testimony of Frank Cavani.)

Q. Where do you reside, Mr. Cavani?

A. 323 19th Avenue, San Francisco, California.

Q. What is your business or occupation? [1651]

A. Bartender.

Q. Where are you presently employed, Mr. Cavani?

A. No place.

Q. Are you acquainted with the defendant, Elmer Remmer?

A. Yes, I am.

Q. How long have you known him?

A. Oh, quite a while, about 36 or 37 years.

Q. Have you ever been associated with him in business?

A. Yes, I have.

Q. When did you first become associated with him in business?

A. At the 110 Eddy, 1943.

Q. Now there was some testimony here, the fact that you had been interested or acquired from Mr. Remmer a tavern in Tracy, California?

A. How far back do you want to go?

Q. Well, at any time did you acquire it?

A. I did, year 1925.

Q. And did you acquire a tavern from him at that time?

A. No, no tavern.

Q. What was it you received?

A. Rooming house and liquor store, card room.

Q. What was the name of the establishment?

A. I believe Ludwig rooming house.

Q. What was the name of the card room?

A. I don't remember; just a card room. [1652]

Q. Did you have any other business transactions with him from that time in 1925 until you became associated in 110 Eddy Street?



(Testimony of Frank Cavani.)

A. Not outside working for him.

Q. Where did you work for him?

A. At Cal-Neva Lodge, 1934, '35, '36, '37, '38, '39, '40, '41, '42, '44, and '45.

Q. Now let us see, that is 1934 to 1945?

A. Yes, sir.

Q. And you say you worked for him there as a bartender?

A. Yes, sir.

Q. What was your method of compensation, that is to say, was it by way of salary or wages?

A. Salary, yes.

Q. Did you have any interest in Cal-Neva by way of interest in the profits?

A. No.

Q. Or working interest?

A. No, just working.

Q. Now that was, was it not, seasonal employment, Mr. Cavani?

A. Yes, during the summer time, summer months.

Q. The Lodge was only open during the summer months?

A. Yes, that is right, from June, around June 10th until September 6th or 7th.

Q. When did you become associated with him in 110 Eddy Street? [1653]

A. Well, I come back from Cal-Neva in the fall of '42 and about a month or so later saw Mr. Remmer and he asked me if I wanted to go to work at 110 Eddy as a bartender and I told him I would. After all, I had to work some place, so I worked during that year 1942 and on in 1943 and he told

(Testimony of Frank Cavani.)

me if I was interested in the proposition in El Cerrito, California.

Q. He asked you if you were interested in the proposition in El Cerrito? A. Yes.

Q. During 1942 until the spring of 1943, when you say you were working for him as bartender, that was at 110 Eddy Street? A. Yes, sir.

Q. What did you receive for your services there?

A. Just bartender wages.

Q. Union scale, I presume? A. Yes, sir.

Q. Did you have any interest in the business itself? A. Not in 1942.

Q. Up until the spring of 1943?

A. That is correct.

Q. Did you then go to work over in El Cerrito?

A. No, I didn't.

Q. Did you at any time work in the 21 Club and San Diego Social Club in El Cerrito? [1654]

A. Not one day.

Q. Do you know whether or not the licenses of the 21 Club were in your name?

A. Yes, sir, I do.

Q. Over what period of time were they in your name? A. The year of 1943.

Q. Do you recall whether or not you reported the income from the 21 Club? A. Yes, I did.

Q. Did you have any interest of any kind in the 21 Club? A. Not at all.

Q. I am going to show you plaintiff's Exhibits 72 and 72A, being respectively the partnership return of income for the fiscal year January 1, 1944,

(Testimony of Frank Cavani.)

to September 30, 1944, being 72, and 72A being partnership return of income for the calendar year 1944, and ask you if it is your signature which is attached to each of those? A. Yes.

Q. And I call your attention on Exhibit 72A that the signature here is Frank Cavani over the typewritten word "Partner." Were you a partner in that enterprise?

A. No. Is this the 21 Club?

Q. What is your answer? A. No, sir.

Q. Do you recall ever seeing this before? [1655]

A. I believe I have if my name is there.

Q. Do you recall who presented it to you?

A. Yes, a fellow named John Simmons I believe.

Q. I call your attention to the name of the person preparing the return, Slater?

A. Bob Slater. Yes, I know him well.

Q. Who is Bob Slater?

A. Bookkeeper for Mr. Remmer at 110 Eddy.

Q. Does that refresh your recollection as to who gave you this return to sign?

A. Well, all I know, Mr. Simmons that year he informed me that I had to file my income tax for the 21 Club because I had the license in my name.

Q. And you signed the document which was presented to you? A. I did.

Q. I understand you, you never worked a day there? A. Not one day.

Q. Now I am going to ask to have this letter, with the attached two sheets, marked for identification, 152 for identification. I am going to show you

(Testimony of Frank Cavani.)

this document, 152 for identification, which is purportedly addressed to you, and ask you if you received that document?      A. No, I never did.

A. No, I never did.

Q. Did you ever see it before?

A. I do not believe I have, no, sir. [1656]

Q. Examine the top sheets and state whether or not you have seen those before, or copies of them?      A. No.

Q. Now, Mr. Cavani, did you have any connection with any place in El Cerrito in connection with Mr. Remmer?      A. Not at all.

Q. Now with respect to 110 Eddy Street, aside from your employment by Mr. Remmer at Cal-Neva, is that the only business in which you were associated with Mr. Remmer?      A. Yes, sir.

Q. At any time?      A. That is the only one.

Q. Now I believe you stated you began to work there in 1942?      A. That is right.

Q. Who hired you to work there?

A. Clarence Bent.

Q. Mr. Bent is presently deceased?

A. Yes.

Q. Do you recall when he died?

A. He died in the spring of '43. It was around Easter time.

Q. Who managed 110 Eddy Street during that period of time in 1942 and until the spring of 1943?

A. Mr. Bent, Mr. Clarence Bent.

Q. After his death who managed the place?

A. Well, I believe I took over. [1657]

(Testimony of Frank Cavani.)

Q. After you took over the active management of the place, what arrangement did you have for compensation?

A. Well, Mr. Remmer gave me the same compensation he was giving me at the 21 Club in El Cerrito.

Q. What was the proposition he gave you?

A. I was to get 25 per cent of the business.

Q. You say you were to get? A. Yes, sir.

Q. Will you explain what you mean by that?

A. Well, that is what he told me, I was going to get 25 per cent of the business?

Q. When were you given that?

A. As soon as I went to work, as soon as I took charge of 110 Eddy, right around May of that year.

Q. Did you have any written agreement of any kind? A. No, not at all.

Q. Will you state whether or not that was to be 25 per cent of the profits or 25 per cent of the assets of the business? A. The whole thing.

Q. How long did you continue there at 110 Eddy Street?

A. Until we closed on the 19th of October, 1947.

Q. What happened to the assets of the business at that time? A. Well, we moved out.

Q. Yes?

A. The landlord raised my rent from \$210 to \$730 a month, so [1658] we decided it was too much rent and couldn't afford it.

Q. What did you do with the equipment?

A. We stored part of it in 53 Mason and part of it in the basement of the Menlo Club.

(Testimony of Frank Cavani.)

Q. Where is it now? A. It must be there.

Q. What was done with the stock on hand, liquor? A. We moved it to 52 Mason Street.

Q. Where is it now?

A. Well, what is left is at the 186 Club.

Q. Do you still have an interest in that liquor?

A. No, sir.

Q. Did you receive anything for your interest in the partnership at the time the business closed up?

A. No, there was money in the bank when we closed 110 Eddy and it was used for 186 Eddy Street to remodel it, in other words, and it took quite a bit of money.

Q. Were you interested in 186 Eddy?

A. Yes, up until July of this year.

Q. When did you become interested there?

A. Well, when we opened up, around 1948, I think June, '48, I am not sure. It was in '48.

Q. So that that particular operation you are speaking of was not in operation in 1946?

A. No. We were at 110 Eddy in '46. [1659]

Q. What is the operation at 186 Eddy Street which you became interested in?

A. Well, there was a store there and we remodeled it and made a bar.

Q. What is the name of the establishment?

A. Bones Corner.

Q. That is at the corner of Eddy and Taylor?

A. Correct.

Q. Now during the years 1943, 1944, 1945, and

(Testimony of Frank Cavani.)

1946 did you receive anything from the 110 Eddy Club other than your salary or wages?

A. Yes, I did, I received \$1500.

Q. When did you receive that?

A. I believe it was in '46.

Q. Do you recall when in '46?

A. No, I don't off-hand. It should be in the book.

Q. For what purpose were you paid that?

Mr. Avakian: Object to that, the books are the best evidence. They are in evidence.

The Court: Let me get the question.

(Question read.)

The Court: Objection overruled. Answer the question.

A. Well, there was money in the bank and Mr. Remmer decided to get some money out of it, so he took some money and I did and so did Mr. Thomas C. Turner, he was another partner at 110 [1660] Eddy also.

Q. Is that all that you ever received at any time other than your wages? A. That's all.

Mr. Gillen: Objected—the books are the best evidence. They should be referred to to get the best evidence.

The Court: Objection overruled. Answer the question.

A. That is all.

Q. At the time the business was closed up, what was done with the license?

(Testimony of Frank Cavani.)

A. I brought it up to the State Board and I left it to the State Board to be used with this new 186 Club.

Q. That same license was used in connection with your present 186 Club?

A. That is correct.

Q. Now when you became associated with the 110 Eddy Club, the 25 per cent interest, who else had an interest in that club? A. In 1943?

Q. In 1943 when you became interested?

A. Later in that year—

Q. I mean at the time you became interested, not later in the year, the time you first acquired any interest?

A. There was Mr. Kyne, Mr. Remmer and myself.

Q. Later on was anybody else connected?

A. Yes. [1661]

Q. Who? A. Thomas C. Turner.

Q. When did he come into the arrangement?

A. Oh, he come in the middle of that summer, August.

Q. Summer of what year? A. '43.

Q. How long did he remain in the business?

A. He remained until we closed.

Q. So that after he came in there remained four of you continuously? A. That's correct.

Q. Do you know an Arthur Pratt?

A. I know of him, yes.

Q. Do you know whether or not he purportedly had an interest in 110 Eddy Club?



(Testimony of Frank Cavani.)

A. Before I came in, when I went to work at 110 Eddy, Mr. Arthur Pratt was the sole partner or owner under the establishment, but I never saw him come in the place, only once or twice.

Q. Do you know when he sold out his interest in 110 Eddy?      A. No, I don't.

Q. You say you became interested in 1943?

A. That is correct, sir.

Q. What is your recollection as to whether or not Mr. Pratt was still in the business when you were there? [1662]

A. I don't believe he was. I understood Mr. Pratt went to Portland, Oregon, which is before I went in, before I took the place at 110.

Q. I am going to show you plaintiff's Exhibit 8, partnership return of income for the year 1943 for 110 Eddy Street, and the listing of partners as being W. E. Kyne and Arthur Pratt. Did you ever see that return before?

A. No, I don't believe I have.

Q. Now I understand from your testimony that you were a partner during 1943?

A. That is correct.

Q. Do you find anything on this return indicating that?      A. No, I don't.

Q. Now who kept the books and records of the 110 Eddy Street when you were there?

A. First of all, when I first moved in there, there was a fellow by the name of Bob Slater.

Q. Yes?

A. He kept the books and I don't know just

(Testimony of Frank Cavani.)

exactly when, the last part of '44 I believe, Harold Maundrell took over from then on.

Q. Now did Mr. Slater, and then Mr. Maundrell, keep those books on the premises at 110 Eddy Street or was the information supplied to them somewhere else?

A. No, they had their own office. [1663]

Q. In what manner was information as to receipts and disbursements supplied to them?

A. Well, Mr. Slater had the key for the premises at 110 Eddy and he used to come in the morning and he had also the combination to the safe, and he would open the safe and go in the safe and take the sacks out of the safe, the sack of the previous day's receipts of the cash register and he would take them to his office, count the money, and he would deposit the money in the bank and then tell us if there was any shortage or anything like that. Mr. Slater used to do that himself.

Q. You say a cash register tape was kept?

A. Yes, sir.

Q. Now was there other income there or other sources of revenue besides the selling of drinks at the bar?

A. No, that's all, just strictly a bar.

Q. Were there pin ball machines?

A. No, just a juke box.

Q. Now during the period of time that you were connected with 110 Eddy Street, to whom did you look for your instructions, Mr. Cavani?

A. Instructions for what?

(Testimony of Frank Cavani.)

Q. For the conduct of the business?

A. Well, from Mr. Remmer, from Mr. Turner, so on, from all of us.

Mr. Gillen: All of us? [1664]

A. Yes, me and Turner were inside the place; I worked day shift and Turner worked night shift, or opposite.

Q. Now during the time that you were there, were there any occasions upon which Mr. Remmer took money out of the business?

A. Not at 110 Eddy. Mr. Remmer had nothing to do with the cash at 110 Eddy. I would take it over to Harold Maundrell or Mr. Slater, he used to take the money himself, and when Harold Maundrell took over I went over in the afternoon and took the money over to Harold Maundrell. I would take the slip and tape from the register and Mr. Maundrell would tell me how much to bank.

Q. My question was, during that period of time did Mr. Remmer ever withdraw any money from that business?

A. He might; if he did, it should show in the book.

Q. Do you recall occasion on which Mr. Remmer drew some nine thousand dollars?

A. Yes, I do.

Q. When was that?

A. I don't know the date but I knew he withdrew nine thousand dollars. He asked me how much money we had in the bank. I said I would have to go down and see, so I did and I came back

(Testimony of Frank Cavani.)

and told him how much we had, so he said, "Get a check for nine thousand."

Q. Did you get the nine thousand dollars?

A. Yes. [1665]

Q. Who did you get it from?

A. The bookkeeper made out the check for nine thousand dollars and I went down to the bank and got the cash.

Q. What did you do with the cash after you got it?      A. I took it to Mr. Remmer.

Q. What size bills were involved?

A. One hundred dollar bills.

Q. Do you recall in what year that was?

A. Well, it was either the year 1945 or 1946.

Mr. Campbell: I am going to have this document marked for identification as 153, for identification.

Q. Mr. Cavani, did you pay anything, incidentally, with regard to acquiring your 25 per cent interest in the 110 Eddy Club?

Mr. Gillen: Objected to as asked and answered.

The Court: Objection overruled. Answer the question.

(Question read.)

A. No, not a cent.

Q. Will you state whether or not you had any arrangements with any one whereby your share of profits was accumulated for that purpose?

A. That is right.

Q. With whom did you have that arrangement?

(Testimony of Frank Cavani.)

A. Mr. Remmer.

Q. What was the amount of interest that was to be accumulated [1666] for your 25 per cent interest?

A. My part of the payment was fifteen thousand.

Q. For the 25 per cent interest?

A. Yes, sir.

Q. And what were your arrangements as to how that fifteen thousand was to be paid?

A. Well, took it out of the profits as we go along.

Q. Now do you know how much of that had accumulated by the end of the year 1946?

Mr. Avakian: Objected to, the records are the best evidence. The records are in evidence, your Honor.

The Court: Objection overruled.

Mr. Campbell: This is one of the parties to the transaction.

A. Their record should be in the book.

Q. What is your recollection?

A. I don't know. I couldn't answer that because the bookkeeper took care of all the financial end.

Q. Did you pay any attention to that?

A. Not exactly, no. I was getting my wages and I was going along with that.

Q. I am just going to ask you to read over this first, 153 for identification.

(Jury and alternate jurors admonished and recess taken until 11:00 o'clock January 7th, at 4:00 p.m.) [1667]

January 7, 1952, 11:00 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. CAVANI

resumes the witness stand on further

Direct Examination

By Mr. Campbell:

Q. Mr. Cavani, before the recess on Thursday you were testifying concerning the 110 Eddy Street bar and I believe you stated that you had some interest in that establishment, is that correct?

A. That is correct.

Q. What was the extent of your interest?

A. Twenty-five per cent.

Q. And when did, or when were you to receive that 25 per cent interest?

A. Well, when my part was paid.

Q. How much was to be paid for your part?

A. Fifteen thousand dollars.

Q. During the period of time that that operated, was that amount paid, do you know?

A. No.

Q. You had not acquired your interest up to the time the place was closed?

Mr. Gillen: Objected to; this was asked and answered on Thursday last. My recollection is Mr. Cavani spoke of change [1668] from one establishment to another, the rent was raised and they moved

(Testimony of Frank Cavani.)

to another establishment and reinvested in another establishment.

The Court: He may answer the question.

(Question read.)

A. No, I did not.

Q. Are you acquainted with Arthur Pratt?

A. Slightly.

Q. When did you first meet him?

A. Well, I was tending bar at 110 Eddy the fall of '42 and part of '43 and I seen Mr. Pratt come in and out of the place. I didn't even know he was a partner, to tell you the truth.

Q. When did you first learn he was a partner?

A. Well, I heard Clarence Bent talk about it.

Q. He was one of the partners there?

A. Yes, sir.

Q. When was that that you first learned that?

A. Well, probably in 1942, I imagine. Mr. Pratt took no part in the operation at any time.

Q. How long did Mr. Pratt continue to be a partner there, if you know?

A. I don't know. He was a partner in '43.

Q. Will you state whether or not, during the period of time that you were to acquire a partnership interest if Mr. Pratt was also a partner? [1669]

A. No, I didn't think he was.

Q. Do you know when Mr. Pratt ceased to be interested in 110 Eddy Street?

A. No, I don't.

(Testimony of Frank Cavani.)

Q. Do you know any of the details surrounding that? A. I don't.

Q. At the time you entered into this oral agreement as to your acquisition of the 25 per cent interest, who did you discuss that matter with?

A. Mr. Remmer.

Q. Did you at that time learn who, if any one, were also partners or were to become partners in 110 Eddy Street?

A. No, the only thing I know Mr. Clarence Bent was a partner. I know that when I was working, and I know Mr. Remmer was a partner and Mr. Kyne. That's all.

Q. Were you told, or did you learn at that time as to the extent of their purported partnership interest? A. No, I didn't.

Q. Do you recall when Mr. Bent died?

A. Yes.

Q. When was that?

A. Well, it was around Easter time in '43.

Q. Do you know whether or not any one replaced him as a partner there?

A. No, I don't, outside of me. [1670]

Q. Was that when you acquired your interest?

A. Well, it was in that year, around May some time, last part of May.

Q. Was that before or after Mr. Bent died?

A. After.

Q. Was that the same year in which you had this talk with Mr. Remmer about becoming a partner?

A. Yes, Mr. Remmer called me. I was in Liver-



(Testimony of Frank Cavani.)

more with my daughter when Mr. Bent passed away.

Q. You had previously worked for Mr. Bent?

A. That's right.

Mr. Campbell: You may cross-examine.

Cross-Examination

By Mr. Gillen:

Q. Mr. Cavani, first of all, with regard to the 21 Club and the San Diego Social Club in El Cerrito, California, it is a fact, is it not, that you had initially been offered a 25 per cent interest in those two enterprises, which were together in the same building, is that correct?

A. The 21 Club, sir.

Q. The 21 and San Diego Social Club, you had been offered a 25 per cent interest?

A. In the 21 Club, yes.

Q. Not in the San Diego Social Club?

A. No, sir.

Q. That was the bar and restaurant? [1671]

A. Bar and restaurant.

Q. And it is true, is it not, that while that 21 Club was being prepared for opening, that is renovated, by putting fixtures and everything in, that you applied for on-sale liquor license?

A. That is correct.

Q. And took it out in your name, contemplating you were going to become a partner and manage the 21 bar and restaurant, is that correct?

A. Right.

(Testimony of Frank Cavani.)

Q. It is true, is it not, that before the 21 Club opened and before you became actively engaged in the operation of it that Mr. Bent died, isn't that so?

A. That is right, sir.

Q. And I believe you said a moment ago at the time he passed away you were at your daughter's home in Livermore and Mr. Remmer called you and advised you of Mr. Bent's death? A. Yes.

Q. It is true, is it not, Mr. Remmer then suggested to you that since you had worked for some time at the 110 Club that it might be practical for you to take the same kind of interest, that is, 25 per cent interest, in the 110 Club and stay there rather than go to the 21 Club at El Cerrito, is that correct? A. Yes, sir.

Q. And you agreed to do that? [1672]

A. I did.

Q. And thereafter you acquired your partnership interest in the 110 Club where you had been working as bartender, is that true?

A. That's right.

Q. Then, if I recollect your testimony, it was to the effect that you never did a day's work at the 21 Club? A. Never.

Q. But your name was on the license because you had applied for it while they were getting ready to open the 21 Club? A. That is right.

Q. And thereafter Mr. Simmons, who was the accountant who took care of the 21 Club's accounts for the year 1944, had you sign the partnership income tax return, is that true?

(Testimony of Frank Cavani.)

A. Yes, that's right.

Q. Now, when you signed the partnership income tax return, I take it that you had no independent knowledge of the business doings of that enterprise, the 21 Club?      A. I did not.

Q. The accountant merely sent you the return to sign and you signed it, is that correct?

A. That's right.

Q. Now, I take it that you made your own individual income tax return that year for your personal return?      A. Yes, I did. [1673]

Q. Who prepared your personal return?

A. Mr. Slater.

Q. And that was the man who took care of the enterprises in San Francisco, is that correct?

A. Yes, sir.

Q. So then the facts of the matter are that Mr. Simmons, George E. Simmons, prepared the partnership return for the 21 Club and your own individual income tax return was prepared by Mr. Slater?      A. That is correct.

Q. And likewise Mr. Slater prepared the return for the 110 Club, is that correct?

A. That is right.

Q. Do you recall how it was brought to your attention by Mr. Simmons that he wanted you to sign the return?

A. Well, bartender working—

Mr. Campbell: I object—it is obvious the answer is not responsive to the question. It calls for a yes or no answer.

(Testimony of Frank Cavani.)

The Court: Let us have the question.

(Question read.)

The Court: You can answer that yes or no. Do you recall?      A. No, I do not.

Q. How did the return come into your hands?

A. Mr. Simmons sent it over by a fellow I knew working at the [1674] 21 Club.

Q. And was it delivered to you or left with some one?      A. It was left at 110 Eddy.

Q. With whom was it left?

A. One of the bartenders.

Q. Do you recall the bartender's name?

A. No, I do not recollect. He was working there at the same time.

Q. Was there any note or instructions with it?

A. Yes.

Q. What was the note?

Mr. Campbell: Objected to—the note is the best evidence.

Q. Have you found the note since last testifying?      A. Yes, I found it last week.

Q. Do you have it in your possession?

A. Yes, I have.

Q. Will you produce it?

A. Funny, I had it last night. I can't find it now. I wonder if I left it in my coat. Can I go look?

The Court: Yes.

A. Here it is.

Mr. Gillen: May I have this marked for iden-

(Testimony of Frank Cavani.)

tification, please? This note which you handed me and which has been marked defendant's Exhibit B-1, is that the note that accompanied [1675] the 1944 income tax return for the 21 Club, sent to you by Mr. Simmons to be signed by you because the liquor license was in your name?

Mr. Campbell: I object to the question in that form. It is assuming a fact not in evidence. It contains a number of elements.

The Court: The witness has already testified there was a note.

Mr. Campbell: The question assumes that Mr. Simmons sent it to him on account of something in Mr. Simmons' mind.

The Court: May I have the question?

Mr. Gillen: May I state that was testified to on Thursday by Mr. Cavani that Mr. Simmons had him sign the income tax return because the liquor license was in his name.

The Court: May we have the question?

(Question read.)

The Court: Objection sustained. The first part of the question may stand, not the latter part.

Mr. Gillen: Is your Honor——

The Court (Interceding): I sustain the objection to the entire question.

Mr. Gillen: I have the answer on Thursday, page 1566 of the transcript, on Mr. Cavani's testimony, that that was information given to him to sign the return because the liquor license was in

(Testimony of Frank Cavani.)

his name, if your Honor wishes me to read it. [1676]

The Court: I don't think that would alter as to the ruling here. The ruling will stand.

Q. Is this the note that accompanied the 1944 tax return Mr. Simmons sent you?

A. That is right.

Q. It was left by a man named Len at the 110 Eddy Club?

A. No, he was working at the 21 Club.

Q. Who was Len? A. A bartender.

Q. Was he the man sent over with the return?

A. He is the one that left it at 110 Eddy.

Q. Was this note you have handed me left with the return at the 110 Eddy Club?

A. That is right.

Mr. Gillen: I offer this in evidence.

Mr. Campbell: No objection.

The Court: It may be admitted.

Mr. Gillen: With the Court's permission——

Mr. Campbell: May I suggest to the court, on numbering of defense exhibits we went through the alphabet and are now starting A-1. I think there might be some confusion whether or not A-1 relates to A, so may I suggest on this second group we use 1 followed by the letter A.

The Court: Let it stand this way.

Mr. Gillen: With the Court's permission, I would like to [1677] read this exhibit and then I should like to pass it to the jury so we may——

Mr. Campbell: I will stipulate that is in Mr. Simmons' handwriting.

(Testimony of Frank Cavani.)

The Court: You may read it and pass it to the jury if you desire.

Mr. Campbell: I will stipulate it is in his handwriting.

Mr. Gillen: I think the jury can see his handwriting.

Mr. Campbell: Very well.

Mr. Gillen: This is Exhibit B-1: "Len, have Frank Cavani sign and then drop in mail box. G. E. Simmons." And the Court has indicated I will be permitted to show this Exhibit, B-1 and prosecution's Exhibit 72-A, being income tax return for the year 1944, made out for the 21 Club and on the reverse side of the return, at the left lower corner will be found the signature of Mr. G. E. Simmons.

Q. Now, Mr. Cavani, referring now to plaintiff's Exhibit 72A, did you examine it when you signed it? A. I don't remember.

Q. Do you know that there was shown for 1944, 21 Club, a five thousand dollar loss, \$5540.87, did you notice that?

Mr. Campbell: At the time he signed it?

Mr. Gillen: Yes, at the time he signed.

A. That is what it shows, yes, sir.

Q. Do you recall whether you noticed that at the time and that you [1678] discussed it with anybody? A. Yes, I did.

Q. You did notice it at the time? A. Yes.

Q. Now, you were never a partner in the 21 Club as you have stated, is that correct?

A. Never, no.

(Testimony of Frank Cavani.)

Q. Now, what salary did you draw at 110 Club?

A. At the 110 Club?

Q. Yes. A. In San Francisco?

Q. Yes.

A. I started at \$75 and worked for a little short while and then I was raised to \$100 a week.

Q. Mr. Cavani, in answer to a question by Mr. Campbell on Thursday last, you stated while you were working there as bartender in 1942, and before you acquired an interest, that you were receiving the standard wage of bartenders, is that correct? A. That's right.

Q. And then when you became a partner in this 25 per cent working interest, you received a salary of \$75 a week and then \$100 a week subsequent, is that correct? A. That's right.

Q. Now, that \$75 a week which you received at first and later \$100 a week by way of salary, you put that in your pocket, [1679] did you not? I mean, that is what you took home? A. Sure.

Q. Now, as to the profits over and above your salary, you did not take out any of those profits—they were left on the books to acquire your interest in the physical assets of the business, is that right?

Mr. Campbell: Objected to—the books are the best evidence.

The Court: I think that is a good objection. Objection sustained.

Mr. Gillen: I am going to show him the books, your Honor, but what I am trying to get at, and I think it is proper for me to do, I want to show what



(Testimony of Frank Cavani.)

he did with the profits and what he did with his salary. In other words, the salary he lived on and the profits he left in the business. I just wanted to ask that question so the jury can get it in their minds.

The Court: You may answer the question. Read the question.

Mr. Gillen: I think I can save time by asking another question.

The Court: Very well.

Q. Mr. Cavani, you were really then deriving from that partnership two types of income, one by way of salary, which you lived on, and another share in the profits of the business toward [1680] acquiring a full interest in the business, is that right? A. That is right.

Q. I believe you stated the other day you had drawn out of the business from profits the sum of \$1500? A. That is right.

Q. And that was over and above your salary, isn't that correct? A. That is right.

Q. So then that we may get it fully in our minds, the salary you always drew and you lived on that, that was your living? A. That is right.

Q. And the profits you did not draw, except you say at one time you drew \$1500?

A. That is right.

Q. Now, Mr. Cavani, is it not a fact that you drew more than \$1500—as a matter of fact, you drew \$2900, some of which was devoted to the pay-

(Testimony of Frank Cavani.)

ment of your income tax on the profit that was credited to your account in the books?

A. Well, the books will show.

Q. I am going to show you the prosecution's Exhibit 112, which has been identified, as I recall, as ledger of the 110 Eddy enterprise, and I am going to invite your attention particularly to the page headed "Frank Cavani." Will you look at this page, Mr. Cavani, and tell us if that refreshes your recollection as to the credits you had and what withdrawals you made?

Mr. Campbell: May I ask a question on voir dire? [1681]

The Court: Yes.

Q. (By Mr. Campbell): Mr. Cavani, did you have anything to do with keeping that record?

A. No, none whatsoever.

Q. Did you ever see that record before?

A. Well, the bookkeeper might have shown it to me.

Q. Do you have any recollection of ever having seen it before? A. No, I do not believe so.

Mr. Campbell: I am going to object to the question. The record speaks for itself.

Mr. Gillen: The question is perfectly proper, may it please the Court.

The Court: Read the question.

(Question read.)

The Court: Do you understand that question? Does the fact that looking at that book calls to

(Testimony of Frank Cavani.)

mind that you knew something about the amounts there stated?

A. Well, the bookkeeper was telling me when I paid anything like income tax——

The Court (Interceding): But does it call to your mind, to your own recollection?

A. Well, it is my name there, yes.

Q. Reading from your account, it shows that as of December 31, 1944, the net profit credited to you for the year 1944, out of the 110 Eddy Street enterprise was \$3170.30. Do you recall [1682] whether or not that was the amount credited to you at that time.

A. For the year?

Q. Yes, for the year 1944, that your share of the net profits was \$3170.30?

A. I think so.

Q. And then the next item shows that on March 14, 1945, you drew for payment on federal income tax the sum of \$580.11, which reduces your credit on the books to \$2590.19. Do you recall that you did draw down that amount of money to pay your income tax on the profits of that organization?

A. Yes.

Q. Then on the same date, March 14, 1945, it shows the withdrawal for a 1945 estimate of the profits that would be made for the year 1945, the sum of \$150, which was paid to the Internal Revenue Department, does that refresh your recollection that you paid on an estimate?

A. That is correct.

Q. And that was charged against you as a debit and reduced your credit on the books to \$2440.19.

(Testimony of Frank Cavani.)

On April 12, 1945, there is an item here for 1944 State income tax—that is the State of California income tax—for the sum of \$29.75, and you were shown to have withdrawn that for payment of your State income tax on the net profit for that year, 1944?

A. That's right. [1683]

Q. And that reduced your credit on the books to \$2410.44. Now, on May 31, 1945, there is an item here showing for 1943 net profit, you were credited with \$3121.74, which raised your credit on the books to \$5532.18. Do you recall that you were given a credit for net profit more than you had in 1943?

A. Well, if it is in the books, it must be right.

Q. Now, on June 6, 1945, on your 1945 estimate for the second quarter you are shown to have been deducted with another \$150 to pay the Internal Revenue Department on your estimated second quarter installment, which reduced your credit on the books to \$5382.18. Do you recall that you did make installment payments on that estimate for the year 1945?

A. Yes, I did.

Q. Then on September 12, 1945, the third installment on estimate for 1945 shows that you were debited with another \$150 drawn for payment to the Internal Revenue Department, which reduced your credit on the books to \$5232.18. You did make your third installment payment to the Internal Revenue Department, is that correct?

A. The bookkeeper would have it in the books, I don't know. He asked me to sign those checks and I did accordingly.

(Testimony of Frank Cavani.)

Q. Now, on December 28, 1945, it shows a withdrawal by you of the sum of \$1500 from your credit on the books, which reduces your credit on the books to the sum of \$3732.18. This is the \$1500, I take it, that you referred to in your examination by [1684] Mr. Campbell on Thursday? A. That is right.

Q. You drew that on your credit on the books, \$1500, is that correct? A. Yes.

Q. On December 31, 1945, there shows for estimate on 1945 income tax return, fourth quarter, payment of the sum of \$150, which reduces your credit on the books of 110 Eddy Club to \$3582.18. Do you recall that you did make your fourth quarter payment, is that correct?

A. Yes, that is right.

Q. Now, the 110 Club returns, I believe you testified, the 1945 return was prepared by Mr. Maundrell and the 1946 return was prepared by Mr. Ayton? A. Yes.

Q. Another public accountant who worked there for the enterprises? A. That's correct.

Q. Now, did Mr. Remmer, the defendant here, have anything to do with the actual operation of the 110 Club during all the time that you were there, either during the time you were employed there as salaried bartender or during the time that you were there as 25 per cent working interest partner and serving also in the capacity of bartender?

A. Well, he used to come in and out once or twice a week, not [1685] every day, but he never had any part of operating the tavern at all.

(Testimony of Frank Cavani.)

Q. Did he take any part, to your knowledge, in keeping any books or accounts of the tavern there?

A. No, sir.

Q. Now you, however, did take out cash register tapes and put the money in a sack and put it in the safe, is that correct?

A. That's right; either me or Mr. Turner. There was another man there too.

Q. Whoever happened to be there?

A. Whoever happened to be there at night time, yes.

Q. I believe you said that during the time Mr. Slater kept the books there, it was Mr. Slater who used to come there in the morning and take off the money and take the cash register tapes and go on over to his office, is that correct?

A. That is correct.

Q. And that he would count the money over there, make deposits in the bank and bring back the necessary change, is that true? A. That is true.

Q. Then during the time that Mr. Maundrell succeeded Mr. Slater in keeping the books, it was your practice to take the cash register tapes and the money over to Mr. Maundrell; isn't that correct? A. Yes, sir. [1686]

Q. And then Mr. Maundrell would make the bank deposits and you would pick up the change that was necessary to operate the establishment; is that correct?

A. Well, I go to Mr. Maundrell with the daily receipts and he would figure it out, how much I

(Testimony of Frank Cavani.)

have to bank; he gave me the bank book and slip with the amount of money to bank and I would bank it and then bring the bank book to Mr. Maundrell.

Q. I understood you to say that at one time—I don't have the date in mind now—that the landlord of the premises known as 110 Eddy raised the rent. Did the lease expire, Mr. Cavani?

A. Yes, expired sometime in 1947, I believe around June.

Q. And when the lease expired, under the new lease the rent had been raised materially; is that correct?

A. Correct.

Q. Can you give us the figures?

Mr. Campbell: Objected to as immaterial, if the Court please. It is past the indictment date and would have no bearing on the issues here.

Mr. Gillen: We are pursuing this man's interest, who is a partner in an enterprise.

The Court: You may answer the question.

A. It was raised from \$210 a month to \$750 a month.

Q. And it was determined that was excessive; I mean, you couldn't operate with that expense?

A. Yes, I told Mr. Remmer about it and he said just to move [1687] out of the place.

Q. So then I understood you moved out of the place and at some later time some of the fixtures and some of the stock and so on was moved into the 186 Club?

A. Well, later on, yes.

Q. Now with regard to Mr. Arthur Pratt, you

(Testimony of Frank Cavani.)

stated in your testimony on Thursday that it was your recollection that Mr. Pratt had moved——

The Court: I think we are going into another branch; we will take our recess at this time.

(Jury and alternate jurors admonished and noon recess taken at 11:50 a.m.)

January 7, 1952—1:00 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. CAVANI

resumes the witness stand on further

Cross-Examination

By Mr. Gillen:

Q. I asked you, Mr. Cavani, regarding Mr. Pratt. I believe you stated on Thursday that it had come to your attention while you were in the 110 Club that Mr. Pratt had moved to the State of Oregon from California; is that correct?

A. That is what I was told; yes, sir.

Q. Do you recall about when that was?

A. No, I do not. [1688]

Q. Was it in 1943?

A. I believe it was that year.

Q. Now my associate called my attention this morning when I said in two different questions that after closing the 110 Eddy that you moved into 186 Club. What I had in mind was to say that you



(Testimony of Frank Cavani.)

moved into the 186 Club and that was converted from a storeroom into a cafe and tavern?

A. That is correct.

Q. Now I talked to you this morning about the 1944 income tax return that was filed on behalf of the 21 Club. I am referring now to the one that was prepared by Mr. Simmons, prosecution's Exhibit 72A. At the heading of that it is designated, is it not, "Frank Cavani, doing business as 21 Club"; is that correct? A. That's right.

Q. Now do you have a recollection now, Mr. Cavani, that within a few days thereafter Mr. Slater submitted for your signature—and I will show you prosecution's Exhibit 72 in evidence—another partnership return for the 21 Club for the year 1944, or at least for the period of time from January 1 to September 30, 1944, showing the same loss of \$5540.27, that that was merely put down as the 21 Club, without Frank Cavani's name being in the title; isn't that correct? A. 21 Club, yes.

Q. Now do you have a recollection of this second return being [1689] submitted to you for your return? A. I don't believe so.

Q. Well, this was prepared by Mr. Slater, was it not, as it appears on this exhibit?

A. Yes, that's right.

Q. Mr. Slater's signature appears in the lower left-hand corner and your signature appears in the lower right-hand corner? A. That is right.

Q. Do you recall whether or not you called attention of Mr. Slater at the time he presented

(Testimony of Frank Cavani.)

that to you to sign, that you had already signed an income tax return for the 21 Club?

A. Yes, I did.

Q. And you stated in your direct examination the other day that Mr. Simmons told you that, although you were not a partner, it was necessary for you to sign because your name was on the license?

A. That is correct.

Q. When did he tell you that?

A. He told me before the filing for the income tax.

Q. Before the income tax was filed?

A. Yes.

Q. He was going to have to have you sign it because your name was on the license; is that correct?

A. That is right.

Q. Subsequently your name was taken off the license? [1690]

A. That is correct.

Q. That was while you were working for the 110 Club; is that correct?

A. Correct.

Q. This morning I did not have at hand the continuation of your personal account as a partner of the 110 Club. The last item here read this morning from prosecution's Exhibit 112 was an item on December 31, 1945, you paid the fourth quarter of 1944 estimated tax, \$150, leaving a balance to your credit in the 110 books of \$3582.18. Do you recall me asking you about that this morning?

A. Yes.

Q. Now plaintiff's Exhibit 112A—I will show

(Testimony of Frank Cavani.)

you here, Mr. Cavani—that is the pick-up or continuation for the next entry of your account.

Mr. Campbell: May I question on voir dire?

The Court: Yes.

Q. (By Mr. Campbell): Mr. Cavani, have you ever seen that record before?

A. Well, I don't know. I might have. The book-keeper kept the books.

Q. Did you have anything to do with keeping that account? A. No.

Mr. Campbell: Objected to as calling for conclusion.

The Court: Objection sustained. [1691]

Q. I will ask you to look at it and tell us whether or not the first entry on this account, as of January 1, 1946, shows a balance to your credit?

Mr. Campbell: Objected to—the record speaks for itself.

The Court: Objection sustained.

Q. What does it read on that page?

Mr. Campbell: Same objection.

Mr. Gillen: Well, your Honor.

The Court: Either counsel or the witness may read the exhibit.

Q. What is the first entry that appears there?

A. I don't know a thing about bookkeeping, Mr. Gillen; that's out.

Q. Well, at the extreme right of the page, the first entry, January 1st, at the extreme right of here, what is entered there?

A. You mean the amount?

(Testimony of Frank Cavani.)

Q. Yes. A. \$3548.18.

Q. Isn't \$3582.18? A. That's correct.

Q. Now showing you prosecution's Exhibit 112, I will ask you that in the year 1945, December 31st, it shows a balance of \$3582.18; is that correct?

A. That is what it says here.

Q. Now, Mr. Cavani, on the same date, January 1, 1946, there [1692] appears to your credit, as one-fourth of the profits for the year 1945, to balance \$5532.50, bringing your total of your credit to \$9114.68. Does that refresh your recollection you were given a credit at the beginning of 1946 for the 1945 profits and that you had, as of the beginning of the year 1946, a \$9114.68 credit?

A. I wouldn't know.

Q. Well, was it approximately that, do you recall?

A. Well, if the books say so, it must be. I don't know anything about keeping the books.

Q. On March 13, 1946, there is shown here to have been drawn by you for the Collector of Internal Revenue the sum of \$999.12. Do you recall that you did draw \$999.12 to pay your income tax for 1945? A. If that is in the book, it is correct.

Q. Well, is it your recollection that you paid your income tax on all the profits that you made in the 110 Club by drawing from your credit account?

A. That's right.

Q. And also there appears another item on the same date, March 13, 1946, payable to the Collector of Internal Revenue, check No. 448, for \$225, ap-

(Testimony of Frank Cavani.)

parently an estimate on your 1946 return, leaving a balance to your credit on the books of the 110 Club of \$7890.56. Does that refresh your recollection that is approximately the amount you had on hand at that time? [1693]

A. It must be, Mr. Gillen, if it is in the book. I had nothing to do with keeping the books.

Q. On April 13, 1946, check No. 591, there was paid to the Franchise Tax Commissioner, that would be California, who collects the California tax, the sum of \$49.16, leaving a balance to your credit on the books of \$7841.40. Do you recall that you also drew from your credit account on the books to pay your State income tax?

A. Whatever the books say; I don't know.

Q. Now there appears also on the books a payment on June 13, 1945, to the Collector of Internal Revenue, the sum of \$225, and item September 12, 1945, by check No. 744, payable to the Collector of Internal Revenue, in the amount of \$225, and on January 12, 1946, check No. 825, the sum of \$225, payable to the Collector of Internal Revenue. Would it be your recollection that those were the installments on your estimated income tax for the year 1946 that you paid, installments of \$225 apiece?

A. Probably it is.

Q. That left you, as at the end of the year 1946, a balance of \$7166.40 as of the end of 1946. Does that refresh your recollection that this was what you had on hand by way of credit out of your profits that you permitted to remain on the books of the

(Testimony of Frank Cavani.)

110 Eddy Club as your working interest in one-fourth the profits at that time? [1694]

A. Well, it must be if it shows in the books.

Q. You don't have any independent recollection of these amounts, I understand?

A. No, I haven't.

Mr. Gillen: I think that is all.

### Redirect Examination

By Mr. Campbell:

Q. Mr. Cavani, with relation to these books shown here, I believe you testified you had nothing to do with keeping them? A. No.

Mr. Gillen: Objected to as asked and answered.

The Court: Objection overruled.

Q. What was your answer?

A. No, I didn't.

Q. Did you, particularly during the years 1944, 1945 and 1946 and the first half of 1947, examine the books and records of 110 Eddy Street?

A. Did I examine them?

Q. Yes.

A. No, I just took the word of the bookkeeper; what he told me to do, I done it.

Q. And that bookkeeper you say was who?

A. The first bookkeeper was Bob Slater, next Harold Maundrell.

Q. And who hired Mr. Bob Slater, if you know?

Mr. Gillen: Objected to as incompetent, irrelevant and immaterial, not proper redirect [1695] examination.

(Testimony of Frank Cavani.)

The Court: Objection overruled.

A. That I wouldn't know. He was bookkeeper when I was working at 110 Eddy.

Q. Who hired Mr. Maundrell to keep the books there? A. I believe Mr. Remmer.

Q. During that period of time did you ever receive a profit and loss statement? A. Yes.

Q. Do you still have those?

A. No, I didn't keep them. Mr. Maundrell was telling me if we went in the red or showed a profit or something.

Q. Were you given written statements in regard to profit and loss? A. Yes.

Q. Do you still have those?

A. I believe I still have some of those.

Q. Do you have those with you?

A. No, I haven't.

Q. Now in regard to the amounts that were charged against your account on the books for payment of taxes, who arrived at the amounts of those payments? A. The bookkeeper.

Q. Did you have anything to do with figuring those out? A. No.

Q. Did you sign the checks with relation [1696] to those? A. Yes, I did.

Q. Prior to the drawing of those checks, did you have discussions with anyone concerning them?

A. Well, Mr. Maundrell told me about paying the tax. He give me the amount and made the check out and I signed the check and sent it to the Revenue Department.

(Testimony of Frank Cavani.)

Q. Did you have anything to do with figuring out the amount? A. No, no.

Q. Did you have anything to do with figuring out the amount on returns that you signed?

A. No.

Mr. Gillen: Objected to as asked and answered several times.

The Court: The answer may stand.

Q. Now, as I understand your testimony, you stated that before Mr. Bent's death you were working only at regular Union bartender's wages; is that correct? A. That is right.

Q. And then after Mr. Bent's death, when you entered into this arrangement with Mr. Remmer, that you were to ultimately receive 25 per cent; is that correct?

A. Whatever the profit showed, yes.

Q. After \$15,000 was paid?

A. That is right.

Q. And you then went on to a salary of \$75 a week? [1697] A. That is correct.

Q. Who fixed that salary?

A. Well, myself, I believe; me and Mr. Turner decided to take \$75 a week.

Q. Did you and Mr. Turner discuss that with anybody? A. No, just me and Mr. Turner.

Q. Mr. Turner is dead, is he not? A. Yes.

Q. When did he die?

A. He died in '48 or '49; I am not sure.

Q. Was his arrangement, if you know, similar to your arrangement?



(Testimony of Frank Cavani.)

A. That I couldn't tell you.

Q. You don't know? A. I don't know.

Q. Now when you raised to \$100 a week, how was that arranged? Who arranged that?

A. We did it ourselves.

Q. You and Mr. Turner? A. That's right.

Q. Now you say that this arrangement which you had with Mr. Remmer was made in the spring, I believe, of 1943, after Mr. Bent's death; was that correct? A. Yes, in May.

Q. When did Mr. Turner come into [1698] 110 Eddy? A. Later that year.

Q. Now were the terms under which Mr. Turner was to come into the business discussed with you?

A. No. I was sick that year, around the middle of July.

Q. Did you ever learn the terms of Mr. Turner's being in the business? A. No, never did.

Q. Did you conduct any of the negotiations with Mr. Turner about coming into the business?

A. No.

Q. Now you stated that originally you had been offered a 25 per cent interest in the 21 Club. Who offered you that?

Mr. Gillen: Objected to as asked and answered.

The Court: He may answer the question.

A. Mr. Remmer.

Q. Now relating to the matter of license of the 21 Club being in your name, did you confer with anyone other than Mr. Remmer regarding that?

A. No, I didn't.

(Testimony of Frank Cavani.)

Q. Did you have anything to do with figuring out the amount? A. No, no.

Q. Did you have anything to do with figuring out the amount on returns that you signed?

A. No.

Mr. Gillen: Objected to as asked and answered several times.

The Court: The answer may stand.

Q. Now, as I understand your testimony, you stated that before Mr. Bent's death you were working only at regular Union bartender's wages; is that correct? A. That is right.

Q. And then after Mr. Bent's death, when you entered into this arrangement with Mr. Remmer, that you were to ultimately receive 25 per cent; is that correct?

A. Whatever the profit showed, yes.

Q. After \$15,000 was paid?

A. That is right.

Q. And you then went on to a salary of \$75 a week? [1697] A. That is correct.

Q. Who fixed that salary?

A. Well, myself, I believe; me and Mr. Turner decided to take \$75 a week.

Q. Did you and Mr. Turner discuss that with anybody? A. No, just me and Mr. Turner.

Q. Mr. Turner is dead, is he not? A. Yes.

Q. When did he die?

A. He died in '48 or '49; I am not sure.

Q. Was his arrangement, if you know, similar to your arrangement?

(Testimony of Frank Cavani.)

A. That I couldn't tell you.

Q. You don't know? A. I don't know.

Q. Now when you raised to \$100 a week, how was that arranged? Who arranged that?

A. We did it ourselves.

Q. You and Mr. Turner? A. That's right.

Q. Now you say that this arrangement which you had with Mr. Remmer was made in the spring, I believe, of 1943, after Mr. Bent's death; was that correct? A. Yes, in May.

Q. When did Mr. Turner come into [1698] 110 Eddy? A. Later that year.

Q. Now were the terms under which Mr. Turner was to come into the business discussed with you?

A. No. I was sick that year, around the middle of July.

Q. Did you ever learn the terms of Mr. Turner's being in the business? A. No, never did.

Q. Did you conduct any of the negotiations with Mr. Turner about coming into the business?

A. No.

Q. Now you stated that originally you had been offered a 25 per cent interest in the 21 Club. Who offered you that?

Mr. Gillen: Objected to as asked and answered.

The Court: He may answer the question.

A. Mr. Remmer.

Q. Now relating to the matter of license of the 21 Club being in your name, did you confer with anyone other than Mr. Remmer regarding that?

A. No, I didn't.

(Testimony of Frank Cavani.)

Q. Now showing you defendant's B-1, the note to Len, signed G. E. Simmons, with a portion of the paper torn away. Do you recall whether or not anything was written on there?

A. No, I believe I tore it myself, had some telephone number or something.

Q. When did you tear it? [1699]

A. I don't know. This has been in my possession for the last seven or eight years.

Q. Did you, Mr. Cavani, make a particular point of saving that document?

Mr. Gillen: Objected to as improper redirect. Counsel is cross-examining and attempting to impeach his own witness in cross-examination.

The Court: Objection overruled. Answer the question.

A. Can I have the question?

(Question read.)

A. This one here?

Q. Yes.

A. No, I never did. I just happened to run across it last week. I was laying out some things at home and happened to run across it, so I just put it in my pocket; no intention of keeping it.

Q. Now you found it for the first time last week? A. That's right.

Q. I presume you showed that to Mr. Gillen then; is that right? A. This morning, yes.

Q. I don't recall whether or not you identified the person whose first name was Len that appears on this note? A. Len, yes.

(Testimony of Frank Cavani.)

Q. Did you identify him as to his last name?

Mr. Gillen: He said he was a bartender. [1700]

Q. Do you recall his last name?

A. Len Wylie.

Q. Do you know where he is located at the present time?

A. He is a bartender in San Francisco.

Q. You testified, I believe, both on direct examination and cross-examination, regarding \$1500 that was paid to you in addition to your salary. Who paid that money to you?

A. The bookkeeper wrote the check and I signed the check and I cashed the check.

Q. Who, if anyone, determined the amount that was to be paid at that time?

A. I don't remember. My partner, I believe.

Q. Was there any meeting of anyone before those checks were written out?

A. No, not that I recall—myself, Mr. Turner, Mr. Remmer and Mr. Maundrell.

Q. And who decided how much was to be paid each individual at that time?

Mr. Gillen: Of course, that is improper redirect and assuming something was decided. It is my recollection this man said he merely drew \$1500 out of his account.

The Court: Objection overruled. Answer the question.

(Question read.)

A. I don't know. I guess the money was in the

(Testimony of Frank Cavani.)

bank and we just get something out of it. [1701]

Q. Do you have any recollection about it?

A. No, I haven't. I know I drew this \$1,500, that is all I know, and I don't know if we had a meeting or not, I don't remember.

Q. Do you recall whether or not at that time amounts were also paid to Mr. Remmer and Mr. Turner?

Mr. Gillen: Objected to, the books are the best evidence of that.

The Court: Objection sustained.

Mr. Campbell: Very well. At this time I wish to read, if the Court please, from Plaintiff's Exhibit 112, heretofore identified as the ledger at the 110 Eddy Street, under account of heading "Personal" account headed "Frank Cavani," under date of December 28, 1945, on account check 102, debit of \$1,500. On account of William E. Kyne, the last entry appearing herein is as of May 31, 1945. The account of Elmer Remmer, there is shown a debit on December 17, 1945, item United States Treasury bonds, check 104, \$3,000. The account of Thomas C. Turner, December 28, 1945, on account check No. 102, \$1,500. Account of Arthur R. Pratt, last entry, closing entry, is as of December 31, 1944.

Mr. Gillen: May I ask counsel the way he reads the Kyne account shows nothing drawn?

Mr. Campbell: I stated the last entry shown on Kyne as of May 31, 1945. [1702]

Mr. Gillen: It shows no amount drawn?

Mr. Campbell: The only amount drawn, on

(Testimony of Frank Cavani.)

April 30, 1945, State I. C. 1944, follows reference see 30.

Mr. Gillen: That was the period of time Mr. Kyne was in the service and Mr. Remmer had power of attorney, isn't that so?

Mr. Campbell: I think the record speaks for itself.

The Court: I think it does. The statement will be stricken from the record.

Mr. Campbell: That's all.

Recross-Examination

By Mr. Gillen:

Q. Mr. Cavani, you mentioned finding that paper, a note from Mr. Simmons, which is Defendant's Exhibit 1-B, among your papers last week. You recall answering Mr. Campbell that?

A. Yes.

Q. You returned to San Francisco over last week end, did you not? A. That's right.

Q. You returned to San Francisco what date?

A. Last Thursday night. I don't know the date.

Q. And you returned to Reno when?

A. Last night about 12:00 o'clock.

Q. When you say you found this old note among your papers, do you mean you found that among your papers in San Francisco over the week end when you were home? [1703]

A. Yes, Friday.

Q. And you showed that to me at the Golden Hotel in Reno?

(Testimony of Frank Cavani.)

A. I showed it to you in court.

Q. I mean this morning, at the Golden Hotel, you showed me this note, did you not?

A. I told you I found it, yes.

Q. Now, Mr. Cavani, you stated in your redirect examination to Mr. Campbell that you did not know the arrangement of Mr. Turner in connection with the 110 Club. You knew he had a one-fourth interest, the same as you had?

A. No, I didn't. He had never consulted with me at any time.

Q. Let me show you prosecution's Exhibit 82, 1945 income tax return for the 110 Eddy Club, prepared by Harold Maundrell, signed by yourself, in which it sets forth, does it not, in Schedule I, that Mr. Thomas C. Turner had a one-fourth interest, the same as you? Isn't that so?

A. Yes, that is what it says here.

Q. Does that refresh your recollection that you knew that Mr. Turner had a one-fourth interest the same as you?

A. I believe it was the same partnership, yes.

Q. I show you prosecution's Exhibit 83, which is income tax return for the partnership of 110 Eddy Street for the year 1946, prepared by Mr. Slater and signed by yourself, in which it is set forth also that Mr. Thomas C. Turner had a one-fourth interest, the same as you. [1704]

A. That is what it shows.

Q. Now you stated that you were ill when Mr.



(Testimony of Frank Cavani.)

Turner first became associated with the 110 Eddy enterprise?      A. That is right.

Q. How long were you laid up?

A. I was laid up quite a bit. I broke my right shoulder and I was laid up with that for almost three months.

Q. Was there some other illness that kept you away from your business?

A. Also had an ulcer.

Q. For what period of time over the year were you laid up?

A. The first time from the first week of July until about the middle of August.

Q. After the broken shoulder?

A. No, broke my shoulder afterwards.

Q. Then what period of time were you laid up after that?

A. I was laid up most of the year.

Q. And Mr. Turner came in when you were first ill?      A. That's right.

Mr. Gillen: I think that is all.

Mr. Campbell: That is all.

The Court: Any reason why the witness could not be finally excused?

Mr. Gillen: I think not.

The Court: You may be excused. [1705]

## SOL SANFORD EZRALOW

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

## Direct Examination

By Mr. Campbell:

Q. Will you state your name?

A. Sol Sanford Ezralow.

Q. Where do you live? A. Los Angeles.

Q. What is your present business or occupation?

A. Certified public account, engaged in practice for myself.

Q. Engaged in private practice of your profession? A. Yes.

Q. Were you formerly connected with the Internal Revenue Department? A. Yes, I was.

Q. In what capacity?

A. I was a revenue agent out of the San Francisco division.

Q. And for what period of time?

A. 1944, and I separated from the Internal Revenue service the early part of '47, but my last work I did was in 1946.

Q. In other words, I take it, you had some accumulated leave? A. Right.

Q. Which was used at the end of your service?

A. Right.

Q. Now, in connection with your duties as an Internal Revenue agent, were you assigned to make certain investigations with [1706] relation to the affairs of Elmer Remmer? A. Yes.

(Testimony of Sol Sanford Ezralow.)

Q. Do you recall approximately when you commenced that investigation?

A. I believe the returns was assigned to me the latter part of 1945, November or December of 1945.

Q. Was that investigation still in progress at the time you terminated your connection with the Internal Revenue service; that is to say, your active connection?

A. Yes, it was.

Q. And had you completed your investigation at that time?

A. No.

Q. And at the time that you terminated your connection with the Internal Revenue Service, what did you do with whatever material and records you had gathered to that point?

A. I turned them over to Mr. O'Connell, who is also in the agent's office.

Q. Are you referring to Mr. John O'Connell?

A. Yes, I believe that is correct.

Q. What is his position with the Internal Revenue?

A. Well, I am not exactly sure. I think he was head of what is called the Fraud Squad.

Q. At any rate, you left the survey record with him?

A. Yes, that is correct.

Q. Now, in connection with your investigation of Mr. Remmer's [1707] affairs during the period of time that you were connected with the case, did you secure various books and records of various enterprises in which Mr. Remmer had, or was purported to have an interest?

A. Yes, I did.

Q. And in that connection did you also obtain

(Testimony of Sol Sanford Ezralow.)

certain income tax returns, including individual income tax returns and partnership returns of Mr. Remmer in these various enterprises of the partnerships and corporations, and also of the individuals who purported to be partners in those various enterprises?      A. Yes, I did.

Q. With regard to the various returns and records, which you obtained, did you analyze those returns for the purpose of ascertaining what they disclosed as to the purported ownership as shown on the returns of the various individuals whose names appeared thereon in the various enterprises?

Mr. Avakian: Your Honor—

Mr. Campbell: It is a preliminary question.

Mr. Avakian: The question is so broad, I feel we should object unless narrowed down to the particular returns or people or enterprises he is talking about so we will have an opportunity to know how to cross-examine.

Mr. Campbell: That will be the next question.

The Court: You may answer the question. [1708]

A. The answer is yes.

Q. In that regard, Mr. Ezralow, did you prepare charts for each of the years, 1943, 1944, and 1945, which analyzes those returns to which you have referred and in the manner in which I have indicated?      A. Yes, I did.

Q. I am going to ask to have these documents marked the government's next number in order, with the number 154, 154A, and 154B respectively, for 1943, 1944, and 1945 respectively. Now, without

(Testimony of Sol Sanford Ezralow.)

referring to the contents themselves, and to assist counsel in examining these documents, Mr. Ezralow, I notice that there are certain squares in your charts in red and certain squares in blue. Will you distinguish between the purpose of the blue and the red squares in general terms, without referring to the contents?

A. The blue squares indicate entities. The red squares indicate individuals.

Q. And by entities are you also referring to the entity filing a return, either partnership, individual or corporation? A. Correct.

Q. And the red squares indicating the individuals would be those reflected on those returns as having an interest in those entities?

A. Correct.

Q. Incidentally, were these charts prepared by you during the [1709] period of time that you were employed as an Internal Revenue agent and as a portion of your duties as an Internal Revenue agent? A. Yes.

Mr. Campbell: It may take a little time for counsel to examine these.

The Court: We will take a short recess for about 10 minutes.

(Jury and alternate jurors admonished and recess taken at 1:45 p.m.)

2:00 P.M.

(Defendant present with counsel.)

The Court: I understand counsel have a matter they would like to present in the absence of the jury.

Mr. Avakian: Your Honor, since the jury was already out, we thought we might anticipate the offering of these documents.

The Court: You contemplate offering them?

Mr. Campbell: Yes.

Mr. Avakian: We thought we would raise the objection at this time, your Honor. These three sheets, 1943, 1944, and 1945, purport to be charts—if your Honor can see them from that distance; I will hand them up in a moment—and apparently what Mr. Ezralow did for his own guidance and as part of his own work papers was set forth in blue square, for example, [1710] the B. & R. Smoke Shoppe, and then connect that up with lines with red squares, for example, Remmer, Kyne and Lando, to show, I believe from his testimony, that the 1943 return of the B. & R. Smoke Shoppe listed Remmer, Kyne and Lando as having an interest in the B. & R. Smoke Shoppe, and there are a number of these blue squares which list the business in which different people have an interest and then by connected red squares the names of the people purported to have an interest in them. Now, our objection to these three sheets, your Honor, is this—at the top of each one is the heading “Related Interest” and then the year, and the implication of that obviously, if this goes before the jury, is that every entity

listed on each of these sheets is an interest which is related in some way with the income tax investigation of Mr. Remmer.

Mr. Campbell: I will agree that the word "related interest" can be eliminated to shorten the argument.

Mr. Avakian: The exhibit itself sets forth the names of many entities that are not connected with this case; at least, so far as the evidence goes. For example, on the chart for 1943 there is a blue square entitled "Club Vanderbilt." Now, there is no evidence in this case that Mr. Remmer had any interest in the Club Vanderbilt, and on the contrary Mr. Cavani, who did have an interest in the Vanderbilt, specifically testified, in response to Mr. Campbell, that Mr. Remmer did not have an interest in the Club Vanderbilt. [1711] Then an entity entitled Clark Creek Lodge, and there has never been mentioned in this case and nothing here to show that Mr. Remmer had any connection with that, and then there are names of various individuals in red squares connected with Clark Creek Lodge, who likewise have not been mentioned in this case; for example, Edwin D. Chioso.

The Court: I have this thought now. Matters relating to entities or establishments which are not connected here with Mr. Remmer in the evidence, would have no place in the case.

Mr. Campbell: That is probably true, your Honor.

The Court: Such as the Club Vanderbilt and Clark Creek Lodge.

Mr. Avakian: Your Honor, there is an extensive list of names that have no connection in this case and it would also show that the connecting lines and squares are so intertwined that the squares would be blocked out. Let me read additional names of entities.

The Court: First, if this exhibit is to be admitted at all, or an exhibit similar to this, I would suggest that new documents be prepared which enter only matters in evidence here.

Mr. Avakian: That is our thought, your Honor.

Mr. Campbell: That can be done. We will have charts prepared which will eliminate these entities that [1712] have no connection.

The Court: Do you agree with the thought I just expressed, that if any charts are to be introduced here they should be based entirely matters having to do with the evidence in this case, matters covered by the evidence having to do with the defendant.

Mr. Campbell: Yes, your Honor, but inasmuch as such charts will be prepared from these charts I would put in here for identification and showing the derivation prior to substituting other charts which will be prepared.

Mr. Avakian: May I suggest in that connection, your Honor, that the charts which are placed in evidence here should be prepared from evidence in this case, not from unrelated material. The evidence in this case connects up Mr. Remmer with various businesses——

The Court: We don't know what this witness is going to testify to.



Mr. Avakian: Whatever his testimony is, will be part of the record and the charts should be based on the record at the time the charts are produced.

The Court: We will see what develops.

Mr. Campbell: The objection should be made then rather than at this time.

The Court: We will see what the new charts will have. [1713]

Mr. Avakian: Perhaps this one point will obviate the question. Under Cal-Neva, as a blue entity, there is only one red square in 1943, 1944, and 1945, in which are the names of Elmer F. Remmer and Helen Remmer. The evidence in this case shows William Graham and James McKay also had an interest in Cal-Neva during those three years. Now, it could be that Mr. Ezralow did not investigate those other cases, but the evidence in this case shows that the people interested in Cal-Neva were not simply Remmer, but also McKay and Graham.

The Court: Maybe so, but it is my view we have just seen this witness on the stand for a few moments and it may be that his evidence will cover a long period of investigations and if those investigations and results can be summarized by a chart, I think it will tend to simplify the case for the Court and the jury.

Mr. Avakian: As long as it is based on evidence in the record at the time, we have no objections.

The Court: We can meet that when it comes. I understand these documents, 154, 154A, and 154B, are merely marked for identification, will not be offered in evidence.

Mr. Campbell: No, your Honor.

The Court: Now, are we ready to proceed with the jury?

Mr. Golden: There is one matter, if your Honor wishes [1714] to take it up while the jury is out. Your Honor reserved ruling on defendants' Exhibit E for identification.

The Court: I do not remember reserving any ruling in this entire case.

Mr. Avakian: Last Thursday at the end of the day Mr. Campbell asked you to reserve ruling admitting Exhibit E for identification.

Mr. Campbell: I have not been able to locate copy of the record. We thought we had Mr. Mooney's testimony written up, but I have not been able to locate that.

The Court: You want further time?

Mr. Campbell: Yes, your Honor.

The Court: Very well. Call in the jury.

(Jury returned into court at 2:20.)

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

#### MR. EZRALOW

resumed the witness stand on further

#### Direct Examination

By Mr. Campbell:

Q. Now Mr. Ezralow, prior to the recess you testified that you, during the course of your em-

(Testimony of Sol Sanford Ezralow.)

ployment in this matter, secured certain books and records. Incidentally, during that period of time, that is to say, from May, 1945, through the termination of your services in December, 1946, were you also engaged in other investigations unrelated to this case?      A. Yes. [1715]

Q. So that I take it that all of your time was not devoted to this matter?

A. That is correct.

Q. Now, with regard to the records which you received from Mr. Kyne and Mr. Maundrell, in the course of your investigation, will you state generally what those records were and of what concerns?

A. Well, I asked Mr. Kyne for some records. I also asked Mr. Maundrell for some records, and I specifically recall Mr. Kyne furnished me with a list of cashier's checks. I asked for any information that I could use as a basis to determine the income of, I think the B. & R. Smoke Shoppe. I think it was a horse race betting—

Mr. Avakian: The witness is not answering the question. He was asked to identify records and I ask that portion be stricken, particularly as to his characterizing the business. He is relating conversations and conclusions.

The Court: Let us have the question.

(Question read.)

Mr. Campbell: I will reframe the question.

The Court: The answer will go out.

(Testimony of Sol Sanford Ezralow.)

Q. Will you state the names of the various enterprises concerning which you received books and records? You are referring to work sheet that you made, Mr. Ezralow?

A. That is correct. When I left the Bureau I prepared a summary [1716] of the work I had done and that is what I am referring to.

Q. Was that prepared by you in December of 1946? A. Yes, that is correct.

Q. And that is a matter that is in your handwriting?

A. That is right. It is in my handwriting.

Mr. Campbell: That may be marked for identification and you may refer to it for the purpose of refreshing your recollection. 155 for identification, consisting of some 4 pages, containing handwritten memorandums in pencil.

Mr. Avakian: May we see it, counsel?

Mr. Campbell: Well, it is marked for identification, not in evidence.

(Question read.)

A. Well, there is the B. & R. Smoke Shoppe, which was in a diary form and for each day there was an amount listed which represented——

Q. Before you come to any description of the records, will you state the various enterprises concerning which you received books and records?

A. The B. & H. Smoke Shoppe, 110 Eddy, Day-Night Cigar Store, 186 Club.

Q. Does that complete the list concerning which you received books and records?

(Testimony of Sol Sanford Ezralow.)

A. I believe that is correct.

Q. And concerning which of these enterprises did you receive [1717] records from Mr. Kyne?

Q. Mr. Kyne gave me a list of cashier's checks. That was on the B. & R. Smoke Shoppe. He also furnished me with a diary that was on the B. & R. Smoke Shoppe, and there was some journals and ledgers in connection with the 110 Eddy and Day-Night Cigar Store. I either got those from Mr. Kyne or Mr. Maundrell, I am not sure which. And then on the 186 Club Mr. Maundrell gave me a carton full of what he referred to as poker sheets. They were wrapped up in a rubber band. Each day had several sheets wrapped in a rubber band in a carton, grocery store size carton.

Q. Now, at the time you received these various records from Mr. Kyne and from Mr. Maundrell, do you recall whether or not receipts were given for them?

A. I do not think so. I am not sure, but the relationship was very friendly and I think either they did not ask for them or the question just wasn't raised as to receipts.

Q. Now, what, if any, arrangements did you have—or did you have any arrangements, for returning the records or for making them accessible?

A. Well, at the time these records were given to me, at that time I said I would meet them for a little while because I wanted to analyze them in my office and if they ever wanted to refer to them or look at them while I had them, they were free to

(Testimony of Sol Sanford Ezralow.)

do so, that when I was through with them they could have them [1718] back.

Q. And was that arrangement still in effect at the time you left the service? A. Yes, it was.

Q. And will you state whether or not, during the time you had them and while you were still in the service, access was obtained to them by Mr. Kyne or Mr. Maundrell or any one in their behalf, if you recall?

A. No, I do not recall any one ever asking for them.

Q. Were any requests ever made of you for their return? A. I do not recall, no.

Q. Now, with relation to the B. & R. Smoke Shoppe, will you state, to the best of your recollection, what records were shown you and for what years? You have already referred to cashier's checks.

A. Well, I recall a diary, I guess it was about size 5½ by 9, where there is one figure shown for each day and had a "W" next to the figure or an "L." I asked Mr. Kyne what that meant. He said the "W" represents win and the "L" represents loss and when the day's transactions were over, the result was put down.

Q. I am going to show you plaintiff's exhibits 111 and 111A, which purport to be diary or daily reminder for the years 1942 and 1943, and ask you if you saw those two exhibits in the course of your investigation?

(Testimony of Sol Sanford Ezralow.)

A. This appears to be 1942. These both look familiar as the [1719] books I looked at.

Q. Would it be your best recollection then that these were seen by you in the course of your investigation? A. Yes.

Q. Now, did you also, in the course of your examination of the records which were made available to you of the B. & R. Smoke Shoppe, see a similar book with relation to the year 1944?

A. Yes.

Q. Will you describe the appearance of that book, to the best of your recollection?

A. To the best of my recollection it was almost identical with those I have just seen.

Q. That is to say 111 and 111A?

A. Those two books you just showed me.

Q. What were the nature of the entries that you observed in that 1944 book?

Mr. Avakian: Objected to—the book itself is the best evidence.

The Court: Objection will be overruled.

Mr. Avakian: May the witness be instructed not to answer as to the contents then, your Honor.

The Court: Yes, I will watch that and see what develops here.

Mr. Avakian: Thank you.

(Question read.) [1720]

The Court: Just state generally the nature of the entries, without stating what they were.

A. They were similar to the book I just looked at.

(Testimony of Sol Sanford Ezralow.)

Q. That is to say 111 and 111A?

A. These black books, that show win and loss for each day.

Q. Do you recall whether or not more than one entry per day was shown in that book, 1944?

Mr. Avakian: Objected to—the record is the best evidence. May I call your Honor's attention that the exhibits introduced by the government show that the 1943 and 1945 books were returned to Mr. Semenza, but no showing that the government ever returned 1944 books so the last record is it is in the possession of the government and I think that the book itself should be produced.

(Question read.)

The Court: You may answer this question.

A. I do not think so.

Mr. Avakian: May we ask that that be stricken, if he doesn't know.

Q. What is your best recollection?

Mr. Avakian: He says he doesn't think so.

The Court: Let him answer the question.

A. My recollection is that there was one figure for each day. That is my best recollection.

Q. I call your attention to the diary for 1943 and to the fact [1721] that under each day there is one figure with "Win" or "Lose" opposite, that is, aside from certain side notations, and ask you if the entries in the 1944 diary which you observed were similar in nature to the entries which you observe in that book?



(Testimony of Sol Sanford Ezralow.)

Mr. Avakian: Object, the 1944 diary itself is the best evidence and unless and until its absence is explained in some way, its contents should not be put in the record.

The Court: We are not going to let the contents be put in the record.

Mr. Avakian: He has asked if it is similar to something in the record—that is giving the contents.

The Court: He did not say definitely. Objection overruled.

A. Yes, it was similar.

Q. Do you recall when you last saw the 1944 diary?

A. It was in my office at the time I left the Bureau in 1946.

Q. Have you seen it since that time?

A. No, I have not.

Q. Do you know, of your own knowledge, what became of that diary?      A. No, I do not.

Q. Now, will you answer this yes or no—did you make an examination of that diary for the purpose of ascertaining the profit or loss incurred by the B. & R. Smoke Shoppe for the calendar year [1722] 1944?

Mr. Avakian: May that be answered yes or no?

Mr. Campbell: I asked him to answer yes or no.

A. Yes.

Q. And in making such examination, did you also have before you the partnership return of income as filed by the B. & R. Smoke Shoppe?

A. Yes.

(Testimony of Sol Sanford Ezralow.)

Q. As a result of that examination, did you have a discussion with any one as to the figures which you ascertained as being the profit or loss incurred by the B. & R. Smoke Shoppe as shown by the 1944 diary to which you have referred? Answer yes or no. A. Yes.

Mr. Avakian: Just a moment. May the answer be stricken until I object?

The Court: Yes, it may go out.

Mr. Avakian: I object to that part of the question which states as a result of his examination, because that implies a question which is conclusion. We think it should be a factual inquiry as to whether he did or not.

Mr. Campbell: I will reframe the question.

Q. Having completed your examination of the 1944 Diary and 1944 partnership return of income, did you have a discussion concerning those matters with any one? Answer yes or no?

Mr. Avakian: Objected to as contrary to the evidence. [1723] He already testified when he left the Bureau he had not completed his examination, that the investigation was still in progress and he turned his work over to some one else.

The Court: Objection overruled. Answer the question.

A. Yes.

Q. And with whom did you have that discussion?

A. Mr. Kyne.

Q. Now, as a result of the examination of that diary and of the 1944 return, did you prepare, in the

(Testimony of Sol Sanford Ezralow.)

course of your official duties, and as a part of your official duties, a report relating to such examination?

Mr. Avakian: Objected to, your Honor, as leading and suggestive and again calling for a conclusion with that phrase, "as a result." It is not a factual question, but a conclusion as to what the result was for something he did. We think a simple direct question of factual nature would serve this purpose.

The Court: Objection overruled. Answer the question.

(Question read.)

A. I prepared an information report.

Q. Is that a report which is prepared as part of the official duties of a Revenue agent?

A. Yes, it is.

Q. Do you have before you now a copy of that report? A. Yes, I do. [1724]

Mr. Campbell: May this be marked 156 for identification.

Q. Calling your attention to plaintiff's Exhibit 78, the partnership return of income for the calendar year 1944 for the B. & R. Smoke Shoppe, I will ask you to examine that and state if that is the partnership return of the B. & R. Smoke Shoppe which you had before you at the time you examined the diary to which you refer? A. Yes, it is.

Q. Now, subsequent to your examination of the diary you stated that you had a conference with Mr. Kyne, is that correct? A. Yes.

(Testimony of Sol Sanford Ezralow.)

Q. Now, I will ask you whether or not at the time of such conference, if any agreement was reached as to the amount of profit and loss for the B. & R. Smoke Shoppe for the year 1944?

Mr. Avakian: This is a question which obviously calls for hearsay.

The Court: Let me have the question.

(Question read.)

The Court: Objection sustained.

Mr. Campbell: May I point out two matters in that connection, your Honor?

The Court: Yes.

Mr. Campbell: The testimony here shows the records of the B. & R. Smoke Shoppe for the year 1944 were kept by the witness Kyne; that record further shows that he purported to [1725] be a partner in the enterprise. I am not asking for the language of the conversation in my question. The question, I believe, calls for a yes or no answer, as to whether or not agreement was reached at that time.

Mr. Avakian: Your Honor, that obviously is a conclusion.

The Court: The ruling will stand.

Mr. Campbell: Very well. If the Court please, may I withdraw this witness for a few moments to lay further foundation for certain testimony?

The Court: You may do so.

MR. LYNN HARKNESS

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination

By Mr. Campbell:

Mr. Campbell: I intend to call him for a limited purpose at this time.

Q. Will you state your name, please?

A. Lynn Harkness.

Q. What is your business or occupation?

A. Internal Revenue agent.

Q. To what office are you assigned?

A. San Francisco.

Q. How long have you been an Internal Revenue Agent?

A. A little over six years.

Q. Now, as a part of your employment, were you assigned to the investigation of the affairs of Elmer Remmer? [1726]

A. Yes, sir.

Q. And when was that assignment made, if you recall? When did you come into the picture?

A. I came into it about October 15, 1947.

Q. And was that after Mr. Ezralow had left the service?

A. Yes, sir.

Q. Now, do you recall at the time you came into the case, were certain records and books turned over to you in connection with the investigation?

A. They had previously been——

Mr. Avakian: That can be yes or no, your Honor.

The Court: Read the question.

(Testimony of Lynn Harkness.)

(Question read.)

The Court: Answer, yes or no. A. Yes.

Q. By whom were they turned over to you?

A. They were turned over to me by either Mr. Kyne or Mr. Maundrell.

Q. I think you misunderstood my original question. Were certain records turned over to you that were already in possession of the Internal Revenue service?

A. They were not turned over to me directly.

Q. Did you use certain books and records in connection with your investigation?

A. I used certain books and records, yes. [1727]

Q. In connection with that, did you examine what purported to be the 1944 diary or record book of the B. & R. Smoke Shoppe?

A. Yes, sir.

Q. At a subsequent date did you have occasion to deliver such records as you had of the B. & R. Smoke Shoppe to any one else?

Mr. Avakian: Objected to as leading and suggestive. Every question Mr. Campbell asks contains testimony and calls either a yes or no answer.

The Court: Objection overruled. Answer the question.

A. What records we had that we were using were left in Special Agent's office in care of Mr. Weaver.

Q. I believe you stated that you had seen this 1944 diary? When was the last time you saw that record?

(Testimony of Lynn Harkness.)

A. Well, some time during the investigation and prior to the time that we turned them over to Mr. Weaver.

Q. Have you subsequently made a search for that record? A. Yes, sir.

Q. Do you know what has become of it?

A. No, sir.

Q. Have you searched the files and records of the Internal Revenue agent in San Francisco?

A. Yes, sir.

Q. And in the Reno Internal Revenue Agent's?

A. Yes, sir.

Q. Have you also made inquiries of the Special Agent? [1728] A. Yes, sir.

Q. And have you been able to locate that record?

A. No, sir.

Q. During the course of your examination did you make a complete transcript of the entries in the 1944 diary? A. Yes, sir.

Q. Do you have that?

A. I do not have it with me. I can get it.

Q. Where is it? A. Upstairs.

Q. Would you get that? You have handed me a three-page pencil document consisting of three accounting pages. I will ask you if that is the transcript to which you refer? A. Yes, sir.

Q. Does that set forth the daily entries as you observed them in that 1944 record?

A. Yes, sir.

Mr. Campbell: May this be marked for identification?

(Testimony of Lynn Harkness.)

Q. Is this transcript made by you, Mr. Harkness? A. Yes.

Q. Were you able to ascertain what happened to the original record? A. No, sir.

Q. Now, I notice about the third page, after the red letter "A" appears certain figures. Were those taken by you from the diary [1729] or were they obtained from some other source? Appearing under the red letter "A." Answer that yes or no. Pardon me—will you answer whether they were obtained from the diary or some other source?

A. Obtained from some other source.

Mr. Campbell: This lower portion then I will remove.

Q. The totals appearing hereon and the summary by months are your totals? A. Yes, sir.

Q. But taken from the transcript as set forth on the preceding page? A. Yes.

Mr. Campbell: I will cause to be removed the portion appearing from other sources.

Mr. Avakian: May the removed portion be marked for identification, your Honor?

The Court: Very well—157A for identification.

Mr. Campbell: At this time I offer in evidence Exhibit 157.

Mr. Avakian: Your Honor, we object to the admission in evidence of Exhibit 157 in the present state of the record, because no proper foundation has been laid for the introduction of secondary evidence. Mr. Harkness testified he turned the 1944 diary, the actual original record itself, over to Mr.



(Testimony of Lynn Harkness.)

Weaver. We haven't heard from Mr. Weaver as to what happened [1730] to it.

The Court: Objection sustained.

Mr. Campbell: That is not his testimony.

The Court: Objection sustained. I think that is the testimony.

Mr. Campbell: May I ask the witness a question as to what he did with the 1944 diary?

The Court: Yes.

A. I said I turned over what books and records as were there to Mr. Weaver.

Q. Did that include the 1944 diary?

A. No, it did not.

Mr. Avakian: May I ask the witness on voir dire?

The Court: Yes.

Q. (By Mr. Avakian): Did you have such record to turn over to Mr. Weaver? A. No.

Q. When did you first learn that the 1944 diary was missing?

A. At the time I looked up the records to leave in Special Agent's office I noticed that the diary was missing.

Q. When was that?

A. I would say March or April, 1949.

Q. You testified that you were assigned to this case in October of 1947, is that correct?

A. Correct. [1731]

Q. And some time after that you saw the 1944 diary? A. Yes.

Q. Do you recall when you last saw it?

(Testimony of Lynn Harkness.)

A. Well, I couldn't say exactly. Some time in that period I worked on it during that period.

Q. Was Mr. Weaver also working on the case at that time?      A. Not actively.

Q. When did Mr. Weaver start actively working with these records, if you know.

Mr. Campbell: These records?

Q. These various records that you had in your possession in connection with this case after you were assigned?

A. He was assigned to the case the entire time, but he wasn't active on the work.

Q. Was he active at all?

A. I wouldn't say at all.

Q. He was inactive, although assigned?

A. He was assigned to do some work.

Q. Prior to the time you say you boxed these records?      A. Yes.

Q. Did he actually look at any of these records prior to the time you boxed them?      A. Yes.

Q. Do you know whether or not Mr. Weaver looked at the 1944 diary prior to the time you boxed these records? [1732]

A. I really don't know.

Mr. Avakian: Your Honor, I submit Mr. Weaver is here and we should have the proper foundation laid for secondary evidence.

The Court: I think so.

Mr. Campbell: Very well.

Q. Let me ask—you stated you are an agent.

(Testimony of Lynn Harkness.)

What was the position occupied by Mr. Weaver?

A. Mr. Weaver was special agent.

Q. In making an examination of this nature, what are the responsibilities of a revenue agent and what are the responsibilities of a special agent?

A. A revenue agent's responsibility is determining the tax liability.

Q. And what is primarily the responsibility of a special agent?

Mr. Avakian: Objected to—

Mr. Campbell: I will withdraw the question.

Q. Mr. Harkness, in regard to determining the tax liability, whose function is it in the investigation to make examination of the books and records?

A. That is the revenue agent's.

Q. And that was your function in connection with this case?

A. Yes, sir.

Mr. Campbell: I think that is all. You may cross-examine. [1733]

Mr. Avakian: I understand this witness will be called later?

Mr. Campbell: Oh, yes.

Mr. Avakian: May we defer our cross-examination until that time?

The Court: Very well.

MR. RAY A. WEAVER

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination

By Mr. Campbell:

Q. Will you state your name?

A. Ray A. Weaver.

Q. What is your business or occupation?

A. Special Agent of the Intelligence Unit of the Bureau of Internal Revenue.

Q. How long have you been connected with the Bureau of Internal Revenue?

A. Sixteen years.

Q. You are also a certified public accountant?

A. Yes, sir.

Q. As part of your official duties as special agent of the Intelligence Unit, did you participate in the investigation of the affairs of Mr. Remmer?

A. Yes, I did.

Mr. Campbell: I might say to your Honor, I am calling this witness for limited purpose at this time and will recall [1734] him for general purposes at a later stage.

The Court: Very well.

Q. Mr. Weaver, will you state in general the duties of an Intelligence Unit agent in an investigation of this nature, where there is also assigned revenue agents in the case?

Mr. Avakian: The general question we think is incompetent, irrelevant and immaterial. What he

(Testimony of Ray A. Weaver.)

did in this case may be material, but as to the general nature of duties in the general situation, we do not think that is proper here.

The Court: Objection overruled. Answer the question.

A. The general duties of a special agent are to determine whether any reported income is the result of a fraudulent act on the part of the taxpayer and if so, to secure whatever evidence may be available of such acts.

Q. Does that include the auditing of the books?

A. Not ordinarily, although it may in certain circumstances require some auditing.

Q. Now, turning specifically to the records of the B. & R. Smoke Shoppe, will you state whether or not there came into your possession during your connection with the investigation the 1944 diary record of the B. & R. Smoke Shoppe?

A. I have no recollection of ever seeing the 1944 diary itself. I remember at one time discussing the transcript which the revenue agents had made from the 1944 diary and at that time noticing the large discrepancies between the diary—— [1735]

Mr. Campbell: Never mind the findings.

A. At that time I asked where the 1944 diary was and commenced looking for it.

Q. Were you able to find it?

A. No, sir.

Q. Was a search made at that time?

A. Yes, sir.

Q. Did you participate in the search?

(Testimony of Ray A. Weaver.)

A. I did.

Q. Have you since examined any records to which you have access? A. Yes.

Q. Have you been able to find that record?

A. No, sir.

Q. Do you know what became of it?

A. I have no idea what became of it.

Mr. Campbell: You may cross-examine.

Cross-Examination

By Mr. Avakian:

Q. Mr. Weaver, will you tell us when you made this search for the 1944 diary?

A. I have no recollection of the exact time. I would say it would probably be late in 1948 or early in 1949. That would be my best recollection.

Q. Do you recall when Mr. Kyne was on the witness stand in this case? A. Yes. [1736]

Q. Do you recall while he was on the stand Mr. Campbell asked him to step down and look into a certain box to see if the 1944 diary was there?

Mr. Campbell: Objected to as improper cross-examination. The record will speak for itself; not within the scope of direct.

The Court: Objection sustained.

Mr. Avakian: I am asking him if he recalled that request was made of Mr. Kyne.

The Court: Objection sustained.

Mr. Avakian: It is part of the search made for the record, your Honor.

The Court: Objection sustained.

(Testimony of Ray A. Weaver.)

Q. At the time Mr. Kyne was on this stand testifying, did you know that the 1944 diary was missing?

Mr. Campbell: Objected to as immaterial and not within the scope of direct examination.

The Court: Objection sustained.

Mr. Avakian: May we be heard on it your Honor?

The Court: No.

Q. At the time Mr. Kyne was on the stand did you make a suggestion to Mr. Campbell that he have Mr. Kyne step down from the stand to look at that box?

Mr. Campbell: Objected to——

The Court: Objection sustained. [1737]

Mr. Campbell: I ask the jury be instructed not to draw any inference——

The Court: I do not think the jury will draw any inference. They have been instructed many times, and I will instruct them again, they are to be guided and rely only on the evidence which is properly admitted in evidence coming from the witness or documents. The remarks of counsel or the remarks of court and interchanges between counsel and between the court and counsel are not evidence and not to be considered.

Mr. Avakian: We think it is material.

The Court: There is nothing before the court.

Mr. Avakian: We want to be heard on that objection.

(Testimony of Ray A. Weaver.)

The Court: I do not want to stop to hear it now. Let's proceed.

Mr. Avakian: You mean you are not going to let me explain why I think it is material?

The Court: I made a ruling and I am not going to hear any further about it.

Mr. Avakian: Well, you can see the position I am in.

The Court: I can see your position and that is it.

Q. You said it was late in 1948 or early in 1949 that you made this search for that diary?

A. That is my best recollection. [1738]

Q. And that you also requested the assistance of any agents of the Bureau in making that search?

A. The revenue agents who had done the investigation.

Q. Who were those?

A. Revenue agents Morgan and Harkness.

Q. What is Mr. Morgan's first name.

A. Robert.

Q. And Mr. Harkness is the witness who just left the stand?

A. That is correct.

Q. Were you completely satisfied after that search had been made that that diary was lost?

A. Yes.

Q. Did you make any report to any other officials of the Bureau to the effect that that dairy was lost?

Mr. Campbell: Objected to as immaterial and incompetent, not within the scope of direct.



(Testimony of Ray A. Weaver.)

The Court: He may answer the question yes or no.

A. No.

Q. Did you at any time make any report to any government representative connected with this case, to the effect that that document was missing?

A. Yes, I believe so.

Q. And to whom?

Mr. Campbell: Objected to as immaterial.

The Court: Objection overruled. He may [1739] answer the question.

A. We did; the attorneys connected with the case.

Q. Who specifically? A. Mr. Shelton.

Q. Mr. Shelton is sitting here at the counsel table? A. That is right.

Q. Who else?

A. I am not sure whether I told Mr. Campbell or not.

Q. When did you tell Mr. Shelton?

A. It would be at least a year ago.

Q. And you do not recall whether or not you told Mr. Campbell? A. No, I do not.

Q. Now do you recall during the summer of 1949 you returned certain records of the B. & R. Smoke Shoppe to Mr. Semenza? A. Yes.

Q. Did you tell him at that time that the Bureau had lost the 1944 diary?

Mr. Campbell: Just a minute. That question is objected to as not within the scope of direct examination.

(Testimony of Ray A. Weaver.)

The Court: He may answer.

Mr. Campbell: Further assuming a fact not in evidence.

The Court: He may answer the question.

A. No, because I was not sure the Bureau had lost it.

Q. Did you tell him it was lost, it was missing?

A. It wasn't in the records turned [1740] over to him.

Q. Answer my question.

A. I didn't say that specifically, no; it wasn't necessary, it just wasn't there.

Q. And you never said it was missing?

A. He had a list of the records himself, he could see.

Q. Do you understand my question? Did you say anything to Mr. Semenza about the 1944 diary being missing?

A. I don't know as I made any specific comment on the diary.

Mr. Avakian: Your Honor, we feel in order to make proper showing on our objection to the transcript to be offered that we ought to be permitted to explore further on certain factors in which objections have been sustained and we again respectfully ask the Court to reconsider the objections.

The Court: No, the ruling was made to one of your objections excluding Exhibit 157, that was this transcript was it not—and then counsel requested permission to call a witness, counsel for

(Testimony of Ray A. Weaver.)

the government, in aid of a further laying of foundation and I think that has been made and I am going to admit the exhibit in evidence, No. 157 is admitted.

Mr. Avakian: My point is, we have not been permitted to develop our objection——

The Court: You have already stated your objection.

Mr. Avakian: Yes, and our objection, your Honor, is that we have not been permitted to cross-examine properly on the [1741] foundation as to the loss of the original record.

The Court: Have you any further cross-examination?

Mr. Avakian: Yes, on questions on which objections have been sustained, that is what we want to be heard on.

The Court: I am not going to hear it. The exhibit is admitted in evidence, No. 157. Any further questions?

Mr. Avakian: I understand he is going to be recalled?

Mr. Campbell: For general purposes, yes.

Mr. Avakian: We will defer further cross-examination.

## MR. EZRALOW

recalled to the witness stand on further

## Direct Examination

By Mr. Campbell:

Q. Now, Mr. Ezralow, based upon your examination of the diary, 1944, of the B. & R. Smoke Shop, what did that book disclose as being the net profit of the B. & R. Smoke Shoppe for the year 1944?

Mr. Avakian: Just a minute. Now, your Honor, we object to that because the transcript of that book, 157, which has been received as secondary evidence, was prepared not by this witness, but rather by Mr. Harkness and if there is going to be any questioning as to what that contains, I think it should be addressed to the man who prepared it, not to the man who left the service before it was prepared. It is not a proper question of this witness.

The Court: The objection is sustained. The exhibit is [1742] in evidence and counsel may read from it.

Mr. Campbell: Yes, I will read from this exhibit and I will withdraw the question. Reading from plaintiff's Exhibit 157, which is headed, "B. & R. Smoke Shoppe. Summary of Wins and Losses 1944, taken from diaries supplied by William E. Kyne." There is set forth in two columns the date and then "Win" or "Lose," lose or win figures in parenthesis for each day. At the end is a total, 12/30/44, total \$11,834.35. There is also set forth a monthly summary showing January

(Testimony of Sol Sanford Ezralow.)

\$1342.10, February \$1090.50, March \$348.50, April loss \$3354.50, May gain \$2883, June \$289, July loss \$1105, August gain \$2704, September \$4191, October \$1333.50, November \$1202.74, December \$910; total \$11,834.85.

Q. Now calling your attention to this exhibit, at the time you made your examination did you observe—to the best of your recollection, Mr. Ezralow—the figures which are set forth in this transcript in the records which you saw?

A. If I can see Exhibit 156 I could tell you.

Q. Exhibit 156 for identification, for the purpose of refreshing your recollection.

A. What was the question now?

Mr. Campbell: I will reframe the question.

Q. Going into that transcript, do you now recall whether or not you saw substantially the same daily figures as set forth in that transcript? [1743]

A. Well, the result of the transcript is the same as the figure on the letter that I wrote at that time, so I assume they are the same.

Q. You have compared the figure on the memorandum which you made on October 8, 1946, with the figure used in Exhibit 157, is that correct?

A. Within \$10 of being the same.

Q. Now after you made that examination, I believe you stated at the time you had before you plaintiff's Exhibit 78, return of the B. & R. Smoke Shoppe for 1944, which shows a total income of \$1200, do you recall that?

A. Yes.

Q. Now, did you discuss, Mr. Ezralow, with

(Testimony of Sol Sanford Ezralow.)

any one, the difference between the profit as shown by the diary which you examined and the return which has been filed for the year 1944?

A. Yes.

Q. And with whom was that discussion?

A. Mr. Kyne.

Q. Now did you at that time have any discussion relative to the accuracy of the figures as set forth in the diary? Answer yes or no.

Mr. Avakian: Unless it is shown that the defendant was present, we do not think——

The Court (Interceding): Answer yes or no.

A. What was the question again? [1744]

(Question read.)

A. Yes.

Q. Now will you state what that conversation was?

Mr. Avakian: Now, your Honor, we object. This is obviously hearsay, no showing the defendant was present.

The Court: Objection sustained.

Mr. Campbell: May I make one statement for the record, your Honor?

The Court: Yes.

Mr. Campbell: The evidence shows Mr. Kyne held Mr. Remmer's power of attorney at that time.

The Court: The ruling stands.

Mr. Campbell: Very well.

Q. Now do you know whether or not subsequent to your examination of that diary and of that return, if an amended 1944 return was filed

(Testimony of Sol Sanford Ezralow.)

with respect to the partnership net income of the B. & R. Smoke Shoppe?

Mr. Avakian: May we have the question read?

The Court: Yes, you may.

(Question read.)

Mr. Avakian: May we point out the return and amended return are in evidence.

Mr. Campbell: I am asking if he knows.

The Court: Answer the question yes or no.

Q. Do you know? [1745] A. No, I do not.

Q. I call your attention to defendant's Exhibit "O," a partnership return of income for 1944 of the B. & R. Smoke Shoppe, reporting net income of 12 thousand dollars and marked "Amended" and with file date April 14, 1947, Collector of Internal Revenue, and ask you if that date of April 14, 1947, was subsequent to your leaving the service? A. Yes, it is.

Q. Was that date, however, subsequent to your examination of these books and records and the conversation you have referred to as having had with Mr. Kyne?

Mr. Avakian: I think the answer to that is plain. It is in the record and I think counsel is just trying to emphasize something.

The Court: Objection overruled. Answer the question.

A. Yes.

Q. Now aside from the list of cashier's checks and the diaries did you see any other records of the B. & R. Smoke Shoppe, do you recall?

(Testimony of Sol Sanford Ezralow.)

A. I do not recall any other records of the B. & R. Smoke Shoppe.

Q. Do you recall whether or not during a portion of the time that you were assigned to this case that Mr. Kyne was away in the service?

A. To my recollection while I was on the case he was not in the [1746] service.

Q. I believe you stated you came into the case in 1945?

A. 1945. I believe my first interview with the taxpayer's representative was in 1946.

Q. Do you recall when in 1946 that you first interviewed any one purporting to represent the taxpayer?

A. I am very very vague as to exactly when it was. Probably the early part of 1946.

Q. Do you recall when it was that you first saw Mr. Kyne?

A. I know I saw him after he was out of the service. I do not know if I could exactly fix the month, but I remember talking to him about his having been in the service.

Q. Was that the first time you saw him upon the matter after he came out of the service?

A. I believe so.

Q. Now will you state for what particular years, or in relation to what particular years, you were examining the records of the B. & R. Smoke Shoppe and the other enterprises which you examined into?

A. Well, I was examining for all open years.



(Testimony of Sol Sanford Ezralow.)

Q. Up to and including what year or years?

A. '45, '44, '43, I believe '42.

Q. Now with regard to the year 1945, did you see any records of the B. & R. Smoke Shoppe?

A. Just the diary. [1747]

Q. I am going to show you plaintiff's Exhibit 11B, the red covered diary for the year 1945—there is only one entry in this book, appears under date of January 1, 1945—and ask you if you saw that book in the course of your examination?

A. I don't recall seeing it.

Q. Do you recall seeing any other book in relation to 1945?      A. I don't believe so.

Q. Do you recall seeing any record which relates to 1945?

A. My only possibility would be the checks. I can't recall.

Q. Did you see anything by way of the daily account of profits or losses either in the diary or ledger or any other form?

A. No; of course, this is a long time ago.

Q. I understand. I am asking for your best recollection. Now, you stated that you were shown certain records of cashier's checks and in that connection I am going to show you plaintiff's Exhibit 116, which purports to set out certain lists of checks issued between December 31, 1943, and December of 1946. Of course, that includes a period of time after you left the service, is that correct?

A. Correct.

(Testimony of Sol Sanford Ezralow.)

Q. It was in December, 1946, that you left the service? A. That is right.

Q. Will you examine these and see if those contain the lists which were shown to you as you stated by Mr. Kyne?

A. Yes, many of these sheets are familiar to me; given to me by Mr. [1748] Kyne.

Q. Now subsequent to your examination of the list of cashier's checks and of the diary records or check records and what other books and records, if any, were made available to you, did you have any discussions with any one connected with the B. & R. Smoke Shoppe as to the adequacy of records maintained for the purpose of reflecting true and correct income? Answer that yes or no.

A. Yes.

Q. And with whom was that discussion had?

A. Two people. I mentioned it to Mr. Kyne and I also mentioned it to Mr.—I have forgotten his name now.

Q. Maundrell?

A. Maundrell, exactly.

Q. During the period of time that you were engaged in this investigation, did you ever have any discussions with Mr. Remmer? A. No.

Q. Did you at any time request to or attempt to see or meet with Mr. Remmer for the purpose of discussing matters relating to the B. & R. Smoke Shoppe and the other businesses?

Mr. Avakian: Just a moment. This is objected to, your Honor—

(Testimony of Sol Sanford Ezralow.)

The Court: Objection sustained.

Q. Now in connection with your investigation, did you see books and records purporting to be those of 110 Eddy Street? [1749]

A. Yes, I did.

Q. Incidentally, who turned those over to you for examination?

A. Either Mr. Maundrell or Mr. Kyne, I don't recall which one now.

Q. Do you recall of what they consisted?

A. Yes; cash receipts and disbursement record, the check disbursement record, general ledger, general journal, and cancelled checks arranged numerically and bank statements arranged chronologically.

Q. I am going to show you plaintiff's exhibits 112 and 112A, purporting to be records of 110 Eddy Street, and ask you if those were among the records which you examined and which you stated were given to you, you believe by Mr. Maundrell, for examination?

Mr. Avakian: Mr. Maundrell or Mr. Kyne, he said.

Q. Mr. Maundrell or Mr. Kyne?

A. This book, 1946, I never saw it.

Q. 112A? A. I believe I saw this one.

Q. Referring to plaintiff's Exhibit 112?

A. That is correct.

Q. Now at the time you left the service had you completed your investigation into the affairs of 110 Eddy?

(Testimony of Sol Sanford Ezralow.)

A. I believe that is correct with regard to 110 Eddy.

Q. What is correct? [1750]

A. I had examined the records for the open years and I set forth all my questions and work papers and did come to a conclusion as to what the understated or overstated income was. I didn't come to a conclusion, but set forth all I had done and what questions were raised by my examination.

Q. But had the investigation been completed?

A. No, if I understand your meaning of conclusion conferences with the taxpayer and writing of the final report, the answer is no.

Q. I also include in that the making of the final determination as to the amount of income or loss from business for the years examined.

A. No, no, had not reached that point.

Q. Now with regard to the 186 Club, will you state what records were made available to you?

A. 186 Club I was given a box of poker sheets, wrapped in a rubber band, in a cardboard box the size of a vegetable can box, cardboard box. This was given to me by Mr. Maundrell.

Q. Were you given any other records in relation to the 186 Club or did you observe other records with relation to the 186 Club?

A. I think—well, there was a binder that summarized these poker sheets, but I couldn't make very much sense out of it. I couldn't come to any conclusion on it.

Mr. Avakian: I ask that the last part be

(Testimony of Sol Sanford Ezralow.)

stricken as [1751] not responsive, as opinion and conclusion.

The Court: It may stand.

Q. Were you given any other books or records or were you shown any other books or records?

A. Well, no, I guess not. I talked to a fellow by the name of Byrne to help me interpret these sheets.

Q. Who was Mr. Byrne?

A. Mr. Byrne, as I recall, was an accountant that had some connection—I am not sure—I think Mr. Byrne was accountant during the year——

Q. Of the 186 Club? A. I believe so.

Q. Did you observe or were you shown any minute books, corporate minute books?

A. No, no, not at all.

Q. Did you make inquiry of any one regarding corporate minute books?

A. Well, I asked questions concerning whether or not it was a corporation——

Q. We can't go into your conversation, that is conversation you had now. Who did you have discussions with concerning the affairs of the 186 Club, the individuals?

A. I talked to Mr. Kyne. I talked to Mr. Maundrell. I talked to Mr. Mooser.

Q. Mr. Mooser who is the deputy [1752] collector? A. That is right.

Q. Who made some previous examination?

A. Yes. I also talked to Mr. Slater concerning the 186 Club.

(Testimony of Sol Sanford Ezralow.)

Q. Did you have any discussions with Mr. Turner or Mr. Casselini?

A. No, I don't recall ever meeting those people.

Q. Or with Mr. Remmer concerning the 186 Club?

A. Never saw Mr. Remmer.

Q. Did you have any discussions with Mr. Remmer regarding any of these organizations?

Mr. Avakian: Objected to. He said he never saw him. He couldn't have had.

The Court: He may answer the question.

A. I never saw him, never spoke to him over the telephone; I don't know what he looks like.

Q. Did you also examine the books and records of the Day-Night Cigar Store?

A. Yes, I believe I did.

Q. Of what did they consist?

A. They are very similar to the 110 Eddy, and they were maintained by Mr. Slater.

Q. I am going to show you plaintiff's exhibits 117 and 117B, purporting to be the records of the Day-Night Cigar Store, and ask you to look at those and state whether or not those records were shown to you in the course of your [1753] examination?

Mr. Avakian: Your Honor, we object to the continual use of "purported" in describing the exhibits. They are in evidence, he has presented them himself.

The Court: Objection will be overruled.

A. I recall seeing this 117B.

Q. The entries therein are at a date later?

(Testimony of Sol Sanford Ezralow.)

A. Items for 1946 that I examined for that year. I believe this is the record I examined.

Q. You are referring to plaintiff's Exhibit 117?

A. Yes, that is correct.

Mr. Campbell: I will ask to have this group of ledger sheets marked 158 for identification. You stated, Mr. Ezralow, that in connection with your examination of the 186 Club there were made available to you, I believe you stated by Mr. Byrne, certain ledger sheets with respect to that concern, is that correct? A. That is correct.

Q. I will ask you to examine this 158 for identification and state whether or not you recognize that exhibit?

Mr. Avakian: May we look at it?

The Court: Proceed with the identification and then you can look at it.

Mr. Campbell: May I ask preliminary questions first? A. I don't recall seeing these.

Q. You do not recall them? [1754] A. No.

Q. In what form were the records which were shown to you?

A. They were on white sheets wrapped in a rubber band, rolled up.

Q. Were those accounting sheets or poker sheets to which you refer? A. Poker sheets.

Q. I am going to show you series 110 to 110F and ask you if these are the nature of the records which you saw, without referring to the specific items, if those were the type of poker sheets to which you refer? A. Yes.

(Testimony of Sol Sanford Ezralow.)

Q. I believe there have been marked for identification a couple of cartons of those in the court room. You stated, however, in addition to them, you were shown some record by Mr. Byrne which you state you couldn't make much out of. Do you recall the nature of that record?

A. Well, when I talked to Mr. Byrne he was compiling the record for 1946 and at that time he showed me how he was handling it and I explained to him I did not think that was adequate, did not give sufficient information.

Q. Did you see the records themselves which he was compiling, or did you simply discuss the nature of the records?

A. I think we just discussed them.

Q. Are you familiar with Mr. Byrne's handwriting? [1755]

A. No, I am not. I think I only saw him on one occasion.

Q. Can you then or not state whether or not the group of yellow sheets which I showed you were in Mr. Byrne's handwriting?

A. I could not state.

Q. Now other than the poker sheets then, were you shown any ledger or books of account pertaining to the 186 Club for the years for which you were examining?

A. I believe I saw a summary of these poker sheets.

Q. Do you recall in what form that was?

A. It was in a book form.



(Testimony of Sol Sanford Ezralow.)

Q. And where did you see that?

A. I think Mr. Maundrell—in regard to these poker sheets, I had most of my discussions with Mr. Maundrell. Now I don't know whether he gave those to me or whether I saw them and left them there.

Q. You haven't a definite recollection one way or another in that regard?

A. No, I have no recollection as to whether I took this summary or whether I left that with him.

Q. Do you recall whether or not you made a summary from the record which you saw?

A. I don't recall that.

Q. During the evening recess couldn't you examine your work sheets which are here when court adjourns? I know you are [1756] anxious to get back to Los Angeles, but you won't be able to do so.

A. I will be happy to occupy my time with the records.

Mr. Campbell: May it please the Court, I have concluded my direct examination with the exception of further pursurance in line which he will have to examine the papers which he left at the time he left the service. I think it would be preferable if we could complete our direct examination.

(Jury and alternate jurors admonished and recess taken at 3:50 p.m.) [1757]

Tuesday, January 8, 1952, 10:00 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. EZRALOW

resumed the witness stand on further

Direct Examination

By Mr. Campbell:

(Last question read.)

Q. Did you examine your work sheets for the purpose of determining that?

A. I didn't hear the question.

Q. You testified you had seen, in relation to the 186 Club, a book in which there was purported a summary of the poker sheets, which I believe you testified you saw in the possession of Mr. Maundrell. I asked you if you had made a summary of that book? You were to examine your work sheets during the recess. Do you now recall whether or not you made a summary?

A. I do not recall that I made a summary at that time. I might have, but it escapes me at the moment.

Q. Did your work sheets that you examined disclose any such summary?      A. No.

Mr. Campbell: You may cross-examine.

Cross-Examination

By Mr. Avakian:

Q. I take it, Mr. Ezralow, that over night you examined some files somewhere to look for any

(Testimony of Sol Sanford Ezralow.)

possible summaries that might have been in your work sheets, is that correct? [1758]

A. Well, I just looked at them very hastily.

Q. And where was that?

A. In Mr. Campbell's office.

Q. That is upstairs in this building?

A. That is correct.

Q. Were there a lot of records pertaining to this case?

Mr. Campbell: Objected to—that calls for his conclusion. I will stipulate there are a lot of records.

The Court: You may answer.

A. I saw a lot of books and records but I didn't look through those.

Q. You looked over certain portions of them, is that it?

A. No, I just looked through certain files. There were about three files of work papers. I just glanced through them to see which contained my writing.

Q. I believe you said you were first assigned to this case in 1945? A. That is correct.

Q. And you actually started work on it some time in 1946, is that correct?

A. Either the latter part of '45 or early '46.

Q. And then you left the Internal Revenue at the end of '46?

A. My last working day was in December of 1946.

Q. And at that time, of course, the returns for

(Testimony of Sol Sanford Ezralow.)

the year 1946 had not yet been filed, [1759] had they?

A. I don't know whether they had or not. The 1946 returns were not required to be filed at that time that I left the Bureau.

Q. With the exception of the 186 Club, the various businesses that you were investigating were on a calendar year basis, were they not?

A. I don't recall that.

Q. In any event, the year 1946 was not assigned to you for investigation, is that correct?

A. That is correct.

Q. The last year that was assigned to you is 1945, is that right?

A. That is correct.

Q. And when you stated in your direct examination that you had not seen certain books which Mr. Campbell showed you, for example Exhibits 111A and 112A, those particular books related to the year 1946, isn't that correct?

A. He showed me four books—

Mr. Campbell: I submit the books speak for themselves.

Mr. Avakian: Yes, if he is in doubt, I will show him the books.

Q. One of the books which Mr. Campbell showed you, which you stated you had not seen during your investigation is prosecution's Exhibit 112A, which is entitled "110 Eddy Street" and on the first page there is designated "1946," is there not? [1760] That is one of the books you did not see, is that correct?

(Testimony of Sol Sanford Ezralow.)

A. Well, I might have seen this book and I made no notes on it.

Q. And that is because you were not interested in the year 1946? A. That is correct.

Q. And you did not mean to imply, when you said you had not seen some of these books Mr. Campbell showed you, that those books had been withheld, did you? A. No.

Q. As a matter of fact, I believe you said your relationship with Mr. Kyne and Mr. Maundrell was a friendly one? A. That is correct.

Q. And they turned over to you all the records which you asked for, did they not?

A. To the extent that they had them they did.

Q. They withheld no records from you, isn't that correct?

Mr. Campbell: Objected to as calling for his conclusion.

The Court: Objection sustained.

Q. As far as you know, all the records which they had were turned over to you?

A. Well, I don't know what all records they had.

Q. To the extent that you know, that is all you can say? A. Right, to the extent that I know.

Q. Now in the course of your examination during the period that you were working on this case, I believe you said you had [1761] a number of conversations with Mr. Kyne?

A. That is correct.

Q. And you also had a number of conversations

(Testimony of Sol Sanford Ezralow.)

with Mr. Maundrell?      A. That is correct?

Q. And as a matter of fact you had a conversation about this case with Mr. Kyne on the very first day that he was at work after his return from his service in the army, did you not?

A. I didn't know that that was his first day.

Q. Didn't you have a conversation about that?

A. I talked about his being in the service. I didn't make any point as to when he was released. I don't recall that.

Q. After that first occasion, did you have numerous conversations with Mr. Kyne about this case?      A. Yes.

Q. Were you investigating the year 1942 as a part of your work?      A. I believe so.

Q. And 1943, '44 and '45, is that correct?

A. I believe so.

Q. You examined the B. & R. Smoke Shoppe for those years, did you not?      A. Yes.

Q. And 110 Eddy Street?

A. Yes, to the extent that 110 Eddy Street was in existence. When I say yes, I mean as long as they were in operation.

Q. In other words, from the time Mr. Remmer was connected with [1762] 110 Eddy Street to and including the year 1945, is that correct?

A. That's right.

Q. And with respect to the Day-Night Cigar Store, do you remember what years you investigated?

A. I can't exactly recall the years, but if any

(Testimony of Sol Sanford Ezralow.)

years fell in between 1942, '43, '44 and '45, then I made a record to investigate whatever records were available.

Q. There has been testimony in this record to refresh your recollection that 1943 was the first year in which Mr. Remmer and his associates became interested in the Day-Night Cigar Store and if I am correct in that statement, would you say that it was 1943 through 1945 that you investigated the Day-Night Cigar Store? A. Yes.

Q. And then would that also be true with respect to the 186 Club? A. Yes.

Q. You recall, do you not, that the 186 Club was a corporation?

A. Well, I recall corporation returns were filed, but I never felt it was proper filing of returns. I did not feel actually it was a corporation, in my opinion.

Q. Do you recall the first return filed by the 186 Club was a partnership return in the year 1943?

A. To my recollection it was a corporation return.

Q. I believe you testified in connection with your examination [1763] of the 186 Club you also talked to Mr. Mooser, is that correct?

A. Yes.

Q. And Mr. Mooser was deputy collector of the Bureau of Internal Revenue in San Francisco?

A. That is correct.

Q. And you learned, did you not, that Mr.

(Testimony of Sol Sanford Ezralow.)

Mooser had been of the opinion that the 186 Club should file corporation returns rather than partnership?

A. At the time I talked to him he wasn't certain just what to do. I don't know what he did with it, in view of the fact that he couldn't classify his own thinking on it.

Q. In other words, Mr. Mooser thought it should be a corporation and your own personal opinion was it should be a partnership?

A. That's correct.

Q. I call your attention to defendant's Exhibit "P" in this case, which is partnership return of income for the year 1943 for the 186 Club, and ask you whether that is one of the returns that was assigned to you in connection with this investigation?

A. Yes. I had this return in my file at the time I was an agent. I discussed this return with Mr. Slater——

Mr. Campbell: There is no question pending. You will have to wait for the question.

Q. I also show you defendant's Exhibit "J" in this case, which is a corporation income and declared value excess profits tax [1764] return of the 186 Club for the fiscal year ending June 30, 1943, and ask you whether that is a return which was shown to you in connection with your investigation?

A. This return looks familiar to me.

Q. I show you defendant's Exhibit "Q," which is a corporation excess profits tax return for the



(Testimony of Sol Sanford Ezralow.)

year ending June 30, 1943, of the 186 Club, and ask you whether that return was assigned to you in connection with your investigation?

A. I believe it was.

Q. And then I show you prosecution's Exhibit 87A, which is the corporation income and declared value excess profits tax return of the 186 Club for the fiscal year beginning July 1, 1943, and ending June 30, 1944, and ask you if that also was a return that was assigned to you during the course of your investigation?

A. I believe it was.

Q. I call your attention to the statement which is a part of Exhibit 87A, the return for the period ending June 30, 1944, reading in part as follows:

"During the month of June, 1944, Louis H. Mooser, Jr., Deputy Collector from the office of the Collector of Internal Revenue at San Francisco, California, called at the office of the above-stated corporation and examined its books and records for the fiscal period ending June 30, 1943, and required said corporation [1765] to file Forms 1120, 1121 and 707 for said period."

Did you notice that particular language in this return?

A. Yes, I believe I did.

Q. You were aware then, were you not, that the 186 Club had filed a partnership return for the calendar year 1943?

A. Yes.

Q. You were aware of that during the time you were making this investigation?

A. That is correct.

(Testimony of Sol Sanford Ezralow.)

Q. And during the time of that investigation you were also aware, were you not, that for the very same period, that is, for the year 1943, at the insistence of Mr. Mooser, corporation returns had been filed covering exactly that same period?

Mr. Campbell: Objected to as calling for his conclusion as to the insistence of Mr. Mooser.

The Court: Objection sustained.

Q. Well, you were aware of the fact, were you not, that for exactly that same period, namely the year 1943, corporation returns were filed?

Mr. Campbell: Objected to as assuming a fact not in evidence. I think counsel has inadvertently stated it wrong because it was on a fiscal year basis.

The Court: He may answer the question if he can.

A. The corporation return covered a period that overlapped the calendar year partnership [1766] return.

Q. One corporation return covered a portion of 1943 up to June 30, 1943, did it not, that is one of those periods? A. That is right.

Q. And then the corporation return for the next fiscal year included, did it not, the last six months of 1943? That is prosecution's Exhibit 87A which is for the period beginning July 1, 1943, and ending June 30, 1944, is it not? A. That is correct.

Q. So the last six months of 1943 were included in Exhibit 87A?

A. That is correct. It would appear that way.

Q. Let me ask you then, during the course of

(Testimony of Sol Sanford Ezralow.)

your examination were you aware of the fact that the income of the 186 Club for the year 1943 had been reported on a partnership return and also subsequently had been reported in corporation tax returns?      A. Yes.

Q. Now in your capacity as a revenue agent, and also in view of your position as a certified public accountant, were you then aware of the fact that the income of the 186 Club for the year 1943 had been taxed on a corporation basis and also been taxed on a partnership basis?

Mr. Campbell: Objected to as assuming a fact not in evidence. Partnership return is non-taxable return and so shows on its face. I suggest the question is misleading and also assuming a fact not in evidence.

The Court: Let me have the question. [1767]

(Question read.)

The Court: He may answer the question.

A. The answer is I was aware that there were two returns filed but there wasn't double taxation because a partnership is not a taxable entity.

Q. But the partners paid taxes on their share of profits in their individual income returns?

A. I didn't ascertain that.

Q. Were the returns of the individual partners of the 186 Club also assigned to you for investigation?      A. Some were, not all of them.

Q. And didn't you find in some of those returns

(Testimony of Sol Sanford Ezralow.)

any reference to the partnership income for the 186 Club?

Mr. Campbell: Objected to on the grounds the returns themselves are the best evidence.

The Court: Objection sustained.

Q. Did you inform anybody connected with the 186 Club, during the course of your investigation, that the income of the 186 Club should be taxed on either a partnership or a corporation basis but not on both? A. Yes.

Q. Who did you inform of that?

A. I spoke to Mr. Kyne about it. I spoke to Mr. Slater about it extensively. He gave me an explanation how it came about.

Q. Mr. Slater was the accountant for the 186 Club? [1768]

A. Yes, he filed the partnership return and he felt that the corporation return was in error.

Q. And he told you, did he not, that Mr. Mooser had insisted that they file corporate returns?

A. He did not say that.

Q. Didn't he tell you it was on Mr. Mooser's advice that they did it?

A. That is what he said.

Q. You confirmed that with Mr. Mooser, did you not? A. Yes.

Q. Did you, in any report which you filed to the Bureau, recommend that the corporate tax be refunded on the theory that this should be treated as a partnership rather than a corporation?

A. I didn't complete my case, didn't make rec-

(Testimony of Sol Sanford Ezralow.)

ommendation as to the tax liability or overestimate.

Q. Did you make any statement in any of the reports which you left at the time you severed your connection with the Bureau, calling attention to that fact or that matter?

A. I have to review my papers before I could state.

Q. You don't recall having done it, is that right?

Mr. Campbell: I submit, if the Court please, the papers are the best evidence.

Q. Are they here?

A. Well, I think it is prosecution's Exhibits 155 and 156. [1769]

Q. I am handing you prosecution's Exhibit 155 for identification and would you refer to that and see whether it refreshes your recollection as to whether or not you made any recommendation that the corporate income tax be refunded?

Mr. Campbell: I submit that wasn't the question, if the Court please.

The Court: I don't think we ought to have a witness give an instrument not in evidence.

Mr. Avakian: I asked him whether it would refresh his recollection, your Honor, that is all I am asking.

A. At the time I wrote this report, at the time I worked on this case, I had a statement here that shows—

Mr. Avakian: Just a moment. Don't read from the statement. Just state whether or not it re-

(Testimony of Sol Sanford Ezralow.)

freshes your recollection?      A. Yes, it does.

Q. Will you tell us what your recollection is?

A. What is the question?

The Court: Read the question.

(Question read.)

Q. During the course of your investigation, or at the time you left the Bureau, did you make any report or any recommendation to the effect in substance that the corporate tax paid by the 186 Club should be refunded for the reason it was not a corporation?

A. I pointed out the duplication and also pointed out that [1770] some adjustment should be made because the duplication does exist in great detail. I have a whole paragraph on that.

Q. And do you know whether or not any such adjustment was ever made?      A. No, I do not.

Q. Did you talk to any accountant other than Mr. Slater regarding the 186 Club?

A. I believe I talked to Mr. Byrne.

Q. And he was also a public accountant?

A. I think so.

Q. Both Mr. Slater and Mr. Byrne were what is referred to as outside accountants, isn't that correct, people in public accounting business?

A. I assume that they were.

Q. And they were public accountants who had been retained by the 186 Club in connection with the preparation of their tax returns and records?

A. I do not think Mr. Byrne prepared any tax return.

(Testimony of Sol Sanford Ezralow.)

Q. He had just come into the case?

A. I think that is right.

Q. And he was the accountant who worked on the return for the next year?

A. That is the impression I had.

Q. But Mr. Slater had been retained in connection with returns that had been filed in the past? [1771]

A. Right.

Q. You know, do you not, that Mr. Slater is now deceased?

A. I was told that yesterday, yes.

Q. Did you talk to any other public accountants in connection with the 186 Club?

A. Well, at the time I was working on the case there was an accountant that said he was considering handling it for the taxpayer and I talked to him for about 15 or 20 minutes. Never heard from him again; outside of that, I don't recall any other accountant.

Q. Is that Mr. Ayton?

A. No—I don't recall—Menckoff, I think he is with Arthur Anderson. I don't think he ever actually undertook the job, but he said he was considering it and he wanted to talk to me about the case. I didn't give him any information. I said when he showed me power of attorney, I would be happy to discuss it.

Q. And you heard nothing further?

A. Right.

Q. Still in connection with the 186 Club, I call

(Testimony of Sol Sanford Ezralow.)

your attention to the following language on a sheet which is pasted to the corporation return for the year ending June 30, 1944, namely, prosecution's Exhibit 87A, reading as follows: "Mr. Mooser determined from an examination that he made of daily tally sheets that the daily average net take was \$70. Mr. Mooser believes that this determination would cover the entire period up to [1772] June, 1944." Did that particular language come to your attention during the course of your examination?      A. Yes.

Q. And did you discuss that matter with Mr. Mooser?      A. I believe I did.

Q. And you learned, did you not, that Mr. Mooser had spent approximately a month in his examination of the 186 Club?

A. I wasn't aware at the time but I recall parts of the conversation.

Q. But you do recall that he spent quite a bit of time, do you not?

A. Yes, he said he spent some time just investigating how much attendance there was.

Q. And did he confirm to you the correctness of this statement that he had determined the daily average on the take of \$70?

A. That was strictly an estimate on his part.

Q. But he confirmed to you that it was his estimate, did he not?      A. That is right.

Q. So this statement in the return, so far as you are able to determine, was a correct statement,



(Testimony of Sol Sanford Ezralow.)

that Mr. Mooser was the one who had made that determination of \$70?

A. Yes, Mr. Mooser made that determination.

Q. Do you know whether Mr. Mooser is still employed by the Bureau of Internal Revenue?

A. No. [1773]

Q. What was your answer?

A. I do not know.

Q. Have you not learned in conversations with the prosecution's staff, while you have been here in Carson City, that he is still a deputy collector in San Francisco?

A. I never discussed it.

Q. Now with respect to the Day-Night Cigar Store, can you tell us with whom you discussed the affairs and records of that business during the course of your examination, with what particular individuals?

A. I spoke to Mr. Slater, I spoke to Mr. Kyne, and I spoke to Mr. Maundrell.

Q. Mr. Slater is the same Mr. Slater that you mentioned a moment ago, the public accountant?

A. Yes.

Q. And Mr. Slater had prepared the income tax returns of that business which you were examining, is that correct?

A. I do not recall whether or not he prepared it.

Q. I call your attention to prosecution's Exhibit No. 84, which is the partnership return of the Day-Night Cigar Store for the year 1944, and ask you

(Testimony of Sol Sanford Ezralow.)

whether that was a return which was assigned to you in the course of your investigation?

A. Yes, this was assigned to me.

Q. And on the back page of that return it says, does it not, that Mr. Slater was the man who prepared it? [1774]

A. Yes.

Q. Does that refresh your recollection on that point?

A. Yes.

Q. And you had your discussions regarding that business with Mr. Slater, Mr. Maundrell and Mr. Kyne only?

A. Yes.

Q. And did they show you any records in connection with that business?

A. Yes.

Q. I show you prosecution's Exhibit 117, which is a ledger of the Day-Night Cigar Store, and ask you whether that is one of the records that was showed to you in connection with your investigation?

A. Yes, I believe I got this book.

Q. And that covers the period up to the end of 1945, does it not?

A. Appears to be.

Q. And you examined that book in connection with your work?

A. Yes.

Q. Would you turn to the page which I have marked with a small slip of paper, setting forth the capital account of Sylvan Lando. Have you found that?

A. Yes.

Q. And do you find there that Mr. Lando's share of the profits for the years 1943 and 1944 was credited to his account? [1775]

A. Yes.

Q. Mr. Ezralow, in reporting income from a partnership, is it proper for the individual partner

(Testimony of Sol Sanford Ezralow.)

to report on his individual tax return his share of the partnership profit or the amount of money that he actually happens to draw out during the year of the partnership?

A. His share of the partnership profits.

Q. The amount he draws is immaterial in determining the amount of money that he should put into his individual return as income from that partnership, is that correct?

A. Correct.

Q. Now when a partner is a member of a partnership, which has a particular amount of profit for the year, is it proper accounting to credit the amount of his share of the profits to his capital account?

A. Yes.

Q. And is it also proper accounting to charge his account or subtract from his account any withdrawals that he happens to make during the year?

A. Yes.

Q. And does the balance which remains in his account after he has been given credit for his share of the profit and after the amount of his withdrawals have been subtracted represent his equity in the business?

A. Yes. [1776]

Q. And so then, if a partner does not withdraw his full share of the profits from the business, then the amount that he does not withdraw represents an increase in his equity in the business?

A. His profit and increase since the beginning of the year, due to the profit and no withdrawals, is the amount it is increased.

(Testimony of Sol Sanford Ezralow.)

Q. The amount of profits he has not withdrawn represents equity in the business?

A. In the partnership, yes, sir.

Q. If a partner happens to withdraw in a particular year more than his share of the profits, the excess that he withdraws over and above his share of the profit for that year represents a decrease of his equity in the business, does it not?

A. Yes.

Mr. Campbell: Objected to as assuming facts not in evidence. Most of these matters are matters of law.

The Court: Well, he can answer this question.

A. Yes.

Q. In your private accounting practice, since you left the Bureau of Internal Revenue, have you had accounts dealing with partnerships?

Mr. Campbell: Objected to as immaterial.

The Court: Objection sustained.

Q. Let me ask you this—is it proper accounting to credit a [1777] partner in his capital account with the amount of investment which he originally makes to the business?

Mr. Campbell: Objected to as incompetent, calling for opinion and conclusion of the witness.

The Court: I would ordinarily sustain such an objection but it seems to me we have had so much of it here without objection, the objection is overruled. You may answer the question.

A. Yes.

Q. And, Mr. Ezralow, if one of the partners

(Testimony of Sol Sanford Ezralow.)

makes a larger investment in the business than another partner does, is it not frequently and commonly the case that the partners will, through the years, balance their capital accounts by the one who made the larger investment making heavier withdrawals until their capital accounts reach the desired proportion?

Mr. Campbell: Objected to as assuming facts not in evidence; incomprehensive and incompetent.

The Court: Objection sustained.

Mr. Avakian: On the grounds assuming facts not in evidence.

The Court: On the grounds it is asking for opinion and conclusion of this witness on matters of law.

Mr. Avakian: This is a matter of accounting practice, your Honor, and this man is also here as a former revenue agent and certified public accountant, and the question relates directly [1778] to one of the issues in this case. They are charging fraud and wouldn't it be proper to show that the practice they charge is fraudulent is common accounting practice?

The Court: I am not answering your questions, but I am going to let the ruling stand.

Q. Now among the businesses which I believe you stated you inquired into in the course of your examination is the 110 Eddy Street, is that correct?

A. Yes.

Q. And in connection with that examination you were shown certain records, were you not?

(Testimony of Sol Sanford Ezralow.)

A. Yes.

Q. I show you prosecution's Exhibit 112, which is a ledger of the business known as 110 Eddy for the period up to the end of 1945, and ask you if that is one of the books which you were shown?

A. I believe it is.

Q. I call your attention to a particular sheet in this exhibit entitled "Frank Cavani," and I will ask you to examine that. Can you tell us whether or not you examined that particular page in connection with your examination?

A. It is pretty hard to recall the specific sheet out of 200 sheets.

Q. That is the capital account of Mr. Cavani, is it not? A. Yes. [1779]

Q. What is your best recollection as to whether or not you examined the capital accounts of the partners? A. I believe I saw this.

Q. And on that page there are entered, are there not, Mr. Cavani's shares of the partnership profit for the years indicated in the book?

Mr. Campbell: Objected to calling for his conclusion as to the fact that they were shares of Mr. Cavani's profit.

The Court: Let me have the question.

(Question read.)

The Court: Objection overruled. Answer the question.

A. There are entries here marked one-fourth net profit.

(Testimony of Sol Sanford Ezralow.)

Q. And those amounts are the same as the amount of profit allocated to Mr. Cavani on the income tax return for the same year for 110 Eddy, is that correct?

A. I would have to see the return.

Q. Now I will read to you from prosecution's Exhibit 81, the 110 Eddy Street partnership return of income for the year 1944, the data in Schedule I shows as a distributive share of F. Cavani \$3,170.30. Is that amount entered in the book before you as a credit to his capital account?

A. Yes.

Q. And Mr. Ezralow, if the figure which I read to you from the partnership return is correct, then was that the proper amount to enter in the capital account? [1780]

Mr. Campbell: Objected to as calling for his conclusion. The records speak for themselves.

The Court: Objection sustained.

Q. I believe you already testified, did you not, that the share of a partner's income in a partnership should be credited to his account in the books of the partnership?

Mr. Campbell: Objected to on the grounds the record speaks for itself.

The Court: He may answer this question.

A. Yes.

Q. Now is there an entry in that book as reflecting the share of the profit for the year 1945?

Mr. Campbell: Objected to as calling for his conclusion as to what it reflects. The entry speaks for itself.

(Testimony of Sol Sanford Ezralow.)

The Court: Well, the objection will be overruled.

Q. Or is that in the next book?

A. Answering your question, no.

Q. It is not in the book, is that right?

A. It is not on this page.

(Jurors and alternate jurors admonished and short recess taken at 11:00 o'clock.)

11:05 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. EZRALOW

resumes the witness stand on further [1781]

Cross-Examination

By Mr. Avakian:

Q. I believe you stated in the 1945 book you did not find any entry relating to the crediting of the share of the 1945 profit? A. Yes.

Q. I hand you prosecution's Exhibit 82, which is the 110 Eddy Street partnership return of income for the year 1945, and first of all would you find in Schedule I the amount of the partnership profit which is allocated to Frank Cavani. Let me know when you have found that. A. Yes.

Q. Now from prosecution's Exhibit 112A, which is the 1946 return for the 110 Eddy Street, I am going to read to you the entry dated January 1,



(Testimony of Sol Sanford Ezralow.)

1946, reading as follows: "Frank Cavani Balance 1945, \$3582.18, one-fourth credit \$5532.50." Is that the same amount that is entered on the 1945 partnership return as to Mr. Cavani's share of the profit for that year?      A. Yes.

Q. And is it frequently the case that in partnership capital accounts the share of a partner's profit for a particular year is not entered in the books until the early part of the next year?

A. Yes.

Q. Referring again to the exhibit before you, which I believe is 82, is it?      A. Yes. [1782]

Q. The 1945 partnership return of income. Will you state who is shown on that return as the person who prepared it?      A. Harold Maundrell.

Q. And did you discuss the affairs of the 110 Eddy Club with Mr. Maundrell?      A. Yes.

Q. As well as with the other gentlemen?

A. Yes.

Q. And so far as you know, did Mr. Maundrell and Mr. Slater and any one else whom you talked to in connection with the 110 Eddy turn over to you all of the records of the businesses?

A. Turned over the journals and the general ledger.

Q. Were there other records there of the businesses?      A. That is all I asked for.

Q. Were there bank statements?

A. I do not know.

Q. Did you ask for bank statements?

A. No.

(Testimony of Sol Sanford Ezralow.)

Q. Were there cancelled checks?

A. I do not know.

Q. You didn't ask for them? A. No.

Q. The things you asked for you got, is that right? A. Right.

Q. Now in connection with the B. & R. Smoke Shoppe, I believe [1783] you testified that Mr. Kyne showed you a list of cashier's checks, which is in evidence here. I show you prosecution's Exhibit 116, which contains a number of pages, listing cashier's checks. You testified, did you not, that Mr. Kyne turned that over to you? A. Yes.

Q. And it is a fact, is it not, Mr. Ezralow, that Mr. Kyne had that list of cashier's checks prepared for him by the bank at your request?

A. I don't know that to be a fact.

Q. Well, let me reframe the question. It is a fact, is it not, that after you asked him for a list of cashier's checks, he then had a list prepared and turned it over to you?

A. He turned this list over to me. I don't know if he had it prepared.

Q. Did he turn it over to you on the very same day you asked for it or at some later time?

A. No, at a later date, about a week later.

Q. And he didn't make any objection, did he, to obtaining that list of cashier's checks for you?

A. No.

Q. Now in connection with the B. & R. Smoke Shoppe, you investigated the years 1942 through 1945, is that correct?

(Testimony of Sol Sanford Ezralow.)

A. I believe that is correct.

Q. We do not have in evidence here any return for the year 1945 [1784] for the B. & R. Smoke Shoppe and I believe the testimony is that no return was found for that year and no return has been offered for the year 1942 either, but we do have in evidence prosecution's Exhibit 77, B. & R. partnership return for the year 1943 and Exhibit 78 for the year 1944. Were those two returns assigned to you for examination in connection with this matter?

A. Yes.

Q. And you were shown diaries for the years 1943 and 1944, were you not?

A. Yes.

Q. Mr. Kyne gave those to you?

A. Yes.

Q. Diaries containing the amount of winnings or losses on a daily basis?

A. Yes.

Q. And you were shown a similar diary for the year 1942, is that correct?

A. I believe so.

Q. You heard the testimony yesterday, did you not, that some time after you left the Bureau the other people who were working on this case misplaced or lost the 1944 diary?

Mr. Campbell: Objected to. The record speaks for itself.

The Court: Objection overruled. He may answer.

Q. You heard that testimony, did you not? [1785]

A. Yes.

Q. I will you show you prosecution's Exhibit 111, the diary for 1942 and 111A, which is the diary

(Testimony of Sol Sanford Ezralow.)

for 1943, and ask you whether those were the two diaries that were showed to you?

A. I believe they were.

Q. And did you, in the course of your investigation, total the receipts shown in those two books and compare them with the amount of income shown on the partnership returns for those two years?

A. I believe I did.

Q. Would you refer to the 1943 return, which is before you—I believe it is Exhibit 77—have you found that?

A. Yes.

Q. Exhibit 77, the 1943 return shows a net income for the partnership of 8 thousand dollars even, does it not?

A. Yes.

Q. And in totalling the receipts shown in the 1943 diary you found, did you not, that the total of the receipts shown was an amount in dollars and cents slightly below eight thousand, isn't that correct?

A. I don't recall the totals now.

Q. Don't you recall that the total of the receipts in 1943, that is, total of net wins shown in the 1943 diary, was the amount of \$7,796.15; or did you have any work papers to which you could refer to give us the answer to that? [1786]

A. I don't think I have any work papers on it. I don't recall. I believe I totalled it at the time. As to whether or not they were substantially the same as on the return or a great difference, I don't recall.

Q. Let me see if this refreshes your recollection. Do you recall, Mr. Ezralow, that the returns of the

(Testimony of Sol Sanford Ezralow.)

B. & R. Smoke Shoppe for each of the years that you investigated contained as net income a figure in a larger amount rather than exact dollars and cents figure?      A. Right.

Q. And do you recall also that, with the exception of the diary for the year 1944, the net wins and losses shown in the diary came to a total figure slightly under the round amount shown in the return?

A. Well, I do recall one year of discrepancy which you mentioned, 1944. As to the other years, I have no recollection.

Q. In comparing the diary with the returns, you found nothing to question as to the other years in question, is that what you are saying?

A. I don't know. I don't recall any large discrepancy for every year.

Q. Did you find in the papers upstairs in Mr. Campbell's office work sheets or summaries to which you can refer over the noon recess to refresh your recollection?

A. There is nothing contained in my papers regarding that. [1787]

Q. I believe that you stated that after you found that total of wins and losses in the 1944 diary was in excess of the amount shown on the 1944 return, you discussed that matter with Mr. Kyne?

A. Yes, I did.

Q. Didn't Mr. Kyne tell you at that time that the B. & R. Smoke Shoppe returns had been prepared on the basis of rounding off the total of net

(Testimony of Sol Sanford Ezralow.)

wins and losses upward to the next round figure in preparing the returns?      A. I don't recall that.

Q. You testified, I believe, that the net wins and losses shown in the 1944 diary came to within \$10 of the figure obtained by Mr. Harkness, \$11,834.85?      A. Right.

Q. Actually, an eight dollar difference between you and Mr. Harkness?

A. Within ten dollars.

Q. I show you prosecution's Exhibit 157, which Mr. Harkness testified was the summary that he made of the 1944 diary before it was lost, showing total net wins and losses of \$11,834.85. I call your attention to the B. & R. Smoke Shoppe amended return for the year 1944, showing net income in round amount of 12 thousand dollars. Does that refresh your recollection that the practice of the B. & R. Smoke Shoppe for the years you were investigating was to put on the returns a round figure slightly [1788] in excess of the actual figure shown in the diary?

A. This return was filed after I left and at that time I do not recall any recollection about rounded figures. The return was filed a year after I left.

Q. Isn't it your recollection the 1942 return likewise contained a rounded-off figure?

A. A 1942 return was not filed, as I recall.

Q. Do you have records which would show that?

A. My recollection is I never saw a 1942 return.

Q. Were you investigating 1942?

(Testimony of Sol Sanford Ezralow.)

A. Yes, I was. The first return I have, I believe, for the B. & R. Smoke shoppe was 1943.

Q. Now let us see if this will refresh your recollection. You stated after going through these diaries for 1942, 1943 and 1944, the only diary you recall as raising any question in your mind was the 1944 diary?

Mr. Campbell: I do not believe that is the testimony.

The Court: I do not recollect it.

Mr. Avakian: My question is whether he found any discrepancies in other returns.

A. My recollection—

Mr. Campbell: The question is as to what raised any question in his mind. It is entirely different as to testimony as to discrepancies between income tax return and the diary.

The Court: I will sustain the objection. [1789]

Q. Well, in your examination of the diaries for the years 1942, 1943 and 1944, was the diary for 1944 the only one in which you found some reason to question a return that had been filed?

A. When I compared the return—if it was available—with the diary and there was a discrepancy, I called Mr. Kyne's attention to it. In the case of 1942, there was no return so I can not if there was a discrepancy.

Mr. Campbell: I do not think he answered the question. May the question be read to the witness again?

The Court: Let us have the question.

(Testimony of Sol Sanford Ezralow.)

(Question read.)

A. No.

Q. Did you discuss with Mr. Kyne the matter of whether or not a 1942 return had been filed?

A. I believe I did.

Q. Would your work sheets show that a 1942 return had not been filed, if that were the case?

A. Probably not.

Q. You mean to say if you found no return had been filed, you would make no reference to that in your work sheets?

A. My work sheets were not on a completed case and although I covered many things, I did not make a special point mentioning returns I did not have. At the time I left the case, I did not feel as though I had done all the field work and therefore did not attempt to mention all the things that were not [1790]

Q. The failure to file a return, in an investigation, is an important matter, is it not?

A. It certainly is.

Q. Wouldn't you then have made a comment if that was the case?

Mr. Campbell: Objected to as argumentative.

The Court: It is argumentative.

Q. Are you prepared to say now that there was no return filed for 1942?

Mr. Campbell: Objected to as argumentative and incompetent as to what he is prepared to say and not prepared to say.



(Testimony of Sol Sanford Ezralow.)

The Court: Objection sustained.

Mr. Avakian: I will change the form of the question.

Q. Is it your testimony now that the B. & R. Smoke Shoppe did not file a 1942 return?

A. I don't know.

Q. Do you have before you the original 1944 return of the B. & R. Smoke Shoppe?

A. Yes.

Q. And what is that exhibit number?

A. Plaintiff's 78.

Q. Now whereas the amended return showed a net income of 12 thousand dollars, that one shows a net income of 12 hundred, does it not?

A. The one filed in 1947?

Q. The amended return shows 12 thousand, does it not? A. It appears to be that. [1791]

Q. Any doubt of it?

The Court: What is the exhibit number of that amended return?

Mr. Avakian: Defendant's "O."

Q. You have no difficulty reading the figures, have you? A. No.

Q. Twelve thousand, is it not? A. Yes.

Q. The original return was 12 hundred, is it not?

A. Yes.

Q. When you discussed with Mr. Kyne the fact that the 1944 original return showed an income of 1200, whereas the totalling in the diaries showed \$11,834.85, did he make any statement to you as to how that might have occurred?

(Testimony of Sol Sanford Ezralow.)

Mr. Campbell: Objected to as calling for hearsay.

The Court: Objection sustained.

Q. You did discuss the matter with Mr. Kyne, did you not? A. Yes.

Q. Did Mr. Kyne tell you that the 1944 original return—

Mr. Campbell: Just a minute—I am going to object.

The Court: I have already sustained the objection on the rule of hearsay and this question can call for nothing but hearsay.

Mr. Avakian: Well, you haven't heard the question.

The Court: I have heard enough of it. [1792]

Q. The original 1944 return, which is plaintiff's Exhibit 78, that is before you, is it not?

A. Yes.

Q. And that is signed by William E. Kyne?

A. Yes.

Q. And the signature of the person that prepared the return is A. B. Slater? A. Yes.

Q. And what is the date shown after Mr. Kyne's signature? A. 2-10-45.

Q. And what is the date on the face of the return as the filing date?

A. February 14, 1945.

Q. And you knew, did you not, that Mr. Kyne had entered the service on February 14, 1945?

A. I didn't know that.

(Testimony of Sol Sanford Ezralow.)

Q. Do you know that this return had been prepared just before Mr. Kyne went into service?

Mr. Campbell: Objected to as immaterial.

The Court: You may answer the question.

A. I didn't know that.

Q. Did you learn that at any later time?

A. No.

Q. Mr. Ezralow, do you recall the occasion on which Mr. Kyne turned over to you the diaries of 1942, 1943, and 1944? [1793]

A. You mean the date?

Q. No, I do not mean the date. I mean do you recall the occasion on which he did turn them over to you? Did he turn them all over to you at the same time? A. I do not recall.

Q. You do not recall one way or another?

A. No, I have no exact recollection whether I got them all at once or separately.

Q. Do you recall whether you had any difficulty in getting any of those diaries?

A. No, I recall that I did not have difficulty in obtaining them.

Q. He turned all three of them over to you when you asked for them, is that correct?

A. Well, I don't recall whether all at once or separately.

Q. But when you did ask for them, whether on one occasion or more, you received them?

A. That is correct.

Q. And that applies to the 1944 diary as well as to the others? A. Yes.

(Testimony of Sol Sanford Ezralow.)

Mr. Avakian: Your Honor, we would like to present to your Honor our belief that the law permits hearsay on cross-examination on a point that has been covered on direct and we would be glad to go into that and explain that to you and submit authorities, if you want, and for that purpose I would request [1794] an opportunity to be heard on the matter before this witness is excused.

The Court: Well, the ruling will stand on hearsay.

Mr. Avakian: Even though it is cross-examination covered on direct?

The Court: Unless the conversation was opened up on direct. If it was, you could pursue it on cross and vice versa, if you opened up conversation on cross they may pursue it on redirect, but under no other circumstances.

Mr. Avakian: We believe when a witness—

The Court (Interceding): I will not change that ruling. I am not going to take time to hear argument.

Mr. Avakian: You won't take time to hear argument?

The Court: No.

Mr. Avakian: I think that is all of this witness.

#### Redirect Examination

By Mr. Campbell:

Q. Mr. Ezralow, counsel asked you during cross-examination if you had, at the time that you ter-

(Testimony of Sol Sanford Ezralow.)

minated your service, prepared a partial report and inquired of you as to certain contents of that report, particularly with relation to the 186 Club.

Mr. Avakian: Your Honor, that is not true.

The Court: Let us have the question.

(Question read.) [1795]

Mr. Avakian: He simply refreshed his recollection by looking at it.

The Court: Answer the question.

A. Is that a question?

Q. I call your attention to the testimony. I am showing you plaintiff's Exhibit 155 for identification, and ask you if that is the report to which you referred?

A. Yes.

Q. And is that the report which you examined for the purpose of answering Mr. Avakian's question with relation to what you reported for the 186 Club and filing of both partnership and corporation returns?

A. Yes.

Mr. Campbell: I offer this in evidence.

Mr. Avakian: May I ask on voir dire?

The Court: Yes.

Q. (By Mr. Avakian): You simply referred to that for the purpose of refreshing your recollection?

Mr. Campbell: Objected to—it speaks for itself.

Mr. Avakian: Let us have the record read.

The Court: We will not take the time.

Q. Was this report ever delivered to Mr. Remmer?

A. No.

Q. Was it delivered to any representative of any

(Testimony of Sol Sanford Ezralow.)

of the businesses which you investigated? [1796]

Mr. Campbell: Objected to as immaterial.

The Court: Objection overruled.

A. No.

Q. That was simply a report for your own superiors in the Bureau, isn't that right?

A. Yes.

Mr. Avakian: No proper basis, your Honor, for receiving that in evidence.

The Court: The exhibit will not be admitted.

Mr. Campbell: May I suggest one point, your Honor; that is counsel asked him specifically what he had reported to his superiors and if he had reported in a written form with relation to the 186 Club. He then said he would have to refresh his recollection and submitted his document and I submit the document is the best evidence.

The Court: The ruling will stand. The exhibit will not be admitted.

Q. (By Mr. Campbell): Now counsel asked you that question in substance as follows—that in your examination of the B. & R. Smoke Shoppe of the diaries for the years 1942, 1943 and 1944 and such partnership returns as you saw, namely, those of 1943 and 1944, if the year 1944 was the only year you questioned and your answer was no.

Mr. Avakian: May we have that read?

Q. I will ask you, Mr. Ezralow, if you questioned other years [1797] than 1944?

Mr. Avakian: May I have the entire statement and question read?

(Testimony of Sol Sanford Ezralow.)

(Question read.)

Mr. Avakian: The question I asked him was rather in comparison of his diaries——

The Court: Have you an objection?

Mr. Avakian: My objection is based on the ground the statement is not correct.

The Court: Objection overruled.

Mr. Avakian: May we have the record read on that question?

The Court: No, let us get along.

A. Yes.

Q. What other years did you question?

A. Questioned all the years.

Q. You were asked whether or not you had discussions with Mr. Kyne during your examination of the B. & R. Smoke Shoppe. Did those discussions embrace the question of all of the years you had under investigation for the B. & R. Smoke Shoppe?

A. Yes.

Q. Will you state first over what period of time those discussions took place?

A. The period of time that they related to, or the time that they took place? [1798]

Q. The time that the discussions took place?

A. Took place during the year 1946 before I left the Bureau.

Q. And was there more than one such discussion?

A. Yes, there were several.

Q. That was after Mr. Kyne's return from the the service?

A. Yes.

(Testimony of Sol Sanford Ezralow.)

Q. Where did they take place?

A. 50 Mason Street.

Q. Who else, if any one, was present in addition to yourself and Mr. Kyne?

A. Mr. Maundrell.

Q. Now will you relate the discussions you had with reference to the B. & R. Smoke Shoppe returns for the years which you had under investigation?

Mr. Avakian: Objected to as hearsay. Mr. Campbell objected to my asking—

The Court: Objection sustained.

(Jury and alternate jurors admonished and noon recess taken at 11:50 a.m.)

January 8, 1952, 1:30 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. EZRALOW

resumed the witness stand on further

Redirect Examination

By Mr. Campbell: [1799]

Q. Now, Mr. Ezralow, on cross-examination you were shown plaintiff's Exhibit 112, a ledger of the 110 Eddy Street, and were referred specifically to a page thereof which has a heading, "Frank Ca-



(Testimony of Sol Sanford Ezralow.)

vani," and which you identified, or was identified, as being the capital account of Frank Cavani?

A. Correct.

Q. Now you were also asked by Mr. Avakian relative to the accounting procedure, proper accounting procedures, in a partnership of crediting to a capital account the profits for any particular year. Do you recall that? A. Yes.

Q. Now, Mr. Ezralow, were you in the court room when Mr. Cavani testified concerning his arrangement with Mr. Remmer, wherein the value of the interest to be acquired by him, the price was placed at \$15,000, which amount was to be received by Mr. Remmer out of the profits before he obtained his partnership? Do you recall that testimony? A. Yes.

Q. Now if those facts as testified by Mr. Cavani are the correct facts, what would then be the proper accounting procedure with reference to that account to which your attention has been directed?

A. Well, if Mr. Remmer was to get 15 thousand dollars before Mr. Cavani was to participate in the profit, there should be no——

Mr. Avakian: Just a moment—he has changed the facts of [1800] hypothetical question and Mr. Cavani's testimony, which was he was to get a quarter interest for 15 thousand dollars, to be paid for out of the share of profits, and I do not believe Mr. Ezralow either correctly understood the testimony or the question.

The Court: Let me hear the question.

(Testimony of Sol Sanford Ezralow.)

(Last two questions read.)

The Court: Strike out the answer so far given and begin the answer again.

A. Well, if 15 thousand dollars—my understanding of the testimony was that the price was 15 thousand dollars Mr. Cavani was supposed to pay—then there should be a credit to begin with, Mr. Cavani's account of 15 thousand dollars, showing that this is his equity in the partnership. On the other hand, if I understand another interpretation that occurs to me, and if this second interpretation is that Mr. Cavani is supposed to start participating in the profits when Mr. Remmer gets 15 thousand dollars, then there should be no entry in the capital account, to my knowledge of accounting, until such time as that contingency is met.

Q. By contingency do you refer to the receipt by Mr. Remmer of the 15 thousand dollars for that interest?

A. Yes. In either case, it seems to me, that this ledger account is incorrect.

Mr. Campbell: I think that is all. [1801]

#### Recross-Examination

By Mr. Avakian:

Q. Mr. Ezralow, if the arrangement between Mr. Remmer and Mr. Cavani were that Mr. Cavani was to receive immediately a 25 per cent working interest in the profits and that he was going to leave his share of the profits in the business until it

(Testimony of Sol Sanford Ezralow.)

accumulated—that is, the accumulated profits—reached the figure of 15 thousand dollars, at which time he was to become a one-fourth owner of the assets of the business, what would be the proper accounting entries to make with respect to Mr. Cavani's share of the profits?

A. Well, it seems to me if he has a one-fourth interest which is to be paid for out of the profits that accumulate in his account, it seems to me the record should indicate that at such time as there is an understanding that he has a liability for 15 thousand dollars, that an entry should be made indicating that he has a 15 thousand dollar capital account. Now the payment of this, adjustment should be made as the payment is made for it and I do not see any figure in here indicating the 15 thousand dollars interest that he has. Whether or not it is paid for, I do not think should be a part of the partnership records, but the fact he has a 15 thousand dollar interest should appear on the partnership records. The accumulation of profits, it seems to me, relates only to the terms of payment and not to what his equity is or what his interest is.

Q. If the arrangement were as I stated in my question—do you [1802] recall that or would you like to have me repeat it?      A. Repeat it.

Q. If the arrangement were that Mr. Cavani was to have immediately a 25 per cent interest in the profits and that he was going to use those profits to purchase or to pay for his one-fourth interest in the business, would it not then be proper ac-

(Testimony of Sol Sanford Ezralow.)

counting to credit his account on the partnership books with his share of the profits for each year?

A. Yes.

Q. And that is what was done in the book that you have before you, is that not right? Answer that yes or no. Do you find the entry, or would you like to have me point it out to you?

A. I see the entry.

Q. You see the entry. Your answer was yes then?

The Court: He hasn't answered yet.

A. This account does not reflect my understanding. This account indicates that one-fourth of the profits were credited to the Frank Cavani account.

Q. That was my question—the account shows that, does it not?

A. Yes, it shows that one-fourth of the profits were credited.

Q. Mr. Campbell asked you about what the proper accounting procedure would be—let me ask you, in your experience as a certified public accountant, have you had any contact with partnership businesses in which one partner put up a larger proportion of the capital investment than his share of the profits? [1803]

Mr. Campbell: Objected to as immaterial.

Mr. Avakian: Your Honor, it goes directly to the redirect examination.

The Court: Objection overruled. You may answer the question.

A. Yes.

(Testimony of Sol Sanford Ezralow.)

Q. And then the other partner correspondingly had initially put up less an investment of his proportionate interest, to complete the picture?

A. I have seen that happen.

Q. Have you come in contact with situations of that nature, where through the amounts of their withdrawals the partners balanced their capital accounts?

A. I have seen that happen sometimes.

Q. Now isn't that done, Mr. Ezralow, through this means—the partner who put up more than his share of the investment draws more than his share of the profits, whereas the partner who put up less than his share of the investment draws less than his share of the profits, until their capital accounts, which were initially disproportionate, had balanced?

Mr. Campbell: Objected to as immaterial, because it is not the situation in evidence here.

The Court: Objection overruled. Answer the question.

A. You asked me with relation to these records?

Q. I am asking you about situations you have run into in your [1804] experiences. Would you like to have the question read? A. Yes.

Mr. Avakian: May we have Mr. Campbell's remark on the situation stricken?

The Court: It was just an objection. It will stand. It was overruled.

(Question read.)

A. Yes.

Q. And that is not an unusual situation, is it?

(Testimony of Sol Sanford Ezralow.)

A. No.

Q. Now this morning, Mr. Ezralow, I asked you if you recalled whether, in your examination of the B. & R. Smoke Shoppe diary for the year 1943, you found that the net wins and losses shown in that diary was slightly under the 8 thousand dollar figure shown in the return, do you recall my asking you that? A. Yes.

Q. And you stated that you did not remember. After coming off the stand at the noon recess, did you call to my attention that in the 1943 diary, which is in evidence here, which is prosecution's Exhibit 111A, that there was an adding machine tape? Do you call that to my attention?

A. Yes.

Q. Now I will hand you this exhibit, which contains that tape, and you recall that I asked you if the net wins and losses in this diary added up to the figure of \$7,796.15. Would you read [1805] to me the total on that adding machine paper?

Mr. Campbell: I am going to object until the foundation is laid for the tape and offered in evidence.

Mr. Avakian: The tape is in evidence as part of the exhibit.

Mr. Campbell: I understand it was something found in the book.

Mr. Avakian: The book is in evidence.

Mr. Campbell: May I question on voir dire?

The Court: Yes.

(Testimony of Sol Sanford Ezralow.)

Q. (By Mr. Campbell): Is that permanently affixed to that record? A. The paper?

Q. There are other slips of paper, I notice, in there? A. Yes.

Q. I think your attention was called in examining the records of 110 Eddy Street by counsel to a slip of paper he had put in there, marking the account.

Mr. Avakian: Does counsel imply I inserted this?

Mr. Campbell: I am not implying anything.

The Court: Just a moment.

Q. Have you ever seen that adding machine tape before you were on the stand? A. No.

Mr. Campbell: I make my objection, the proper foundation [1806] be laid for the tape.

Mr. Avakian: I am only asking him to read the figure.

The Court: I don't understand the tape is in evidence.

Mr. Avakian: It is out of the book Mr. Campbell offered.

Mr. Gillen: Part of an exhibit of the prosecution's.

The Court: I do not understand that was part of the exhibit.

Mr. Campbell: If counsel states he has compared it with the record, I have no objection. I have no recollection of the adding machine tape.

Mr. Avakian: I will state Mr. Semenza totalled the receipts in the book and it is the same figure.

(Testimony of Sol Sanford Ezralow.)

Mr. Campbell: I will accept that statement without asking the witness.

Q. Would you read that figure?

Mr. Campbell: I thought we had stipulated? The tape sets forth the same figure in the book?

Mr. Avakian: That is right.

Mr. Campbell: I have no objection, if you state that is the figure.

Q. What is that figure? A. \$7,796.15.

Mr. Avakian: No further questions. [1807]

#### Redirect Examination

By Mr. Campbell:

Q. Mr. Ezralow, you were asked on recross-examination relative to the Cavani account in the books of 110 Eddy Street, Exhibit 112, which is before you, and Mr. Avakian asked you a hypothetical question. I will state it as best I can—assuming that Mr. Cavani was to pay for a one-fourth interest the amount of 15 thousand dollars out of the accumulated profits, he asked you if it was proper then to credit those to Mr. Cavani's account. Do you recall that? A. Yes, sir.

Q. Now would additional entries then—if such were the situation—would additional accounts be necessary to reflect any such situation in the books?

A. Yes.

Q. And what would they consist of?

A. They have to show actual transfer from the Cavani account to the Remmer account.

Q. In other words, as I take it, there would



(Testimony of Sol Sanford Ezralow.)

have to be something set up in the books to show that Mr. Remmer, or whoever was to receive it, was to receive 15 thousand dollars of that amount, is that correct? A. Yes.

Q. Did you find any such entry in those books?

A. I don't recall any.

Q. You don't recall seeing them? [1808]

A. No.

Mr. Campbell: That is all.

**Recross-Examination**

By Mr. Avakian:

Q. When you say additional accounts and entries should have been set up, you mean, do you not, that from the viewpoint of setting up a complete set of records that would satisfy a certified public accountant, those additional accounts should be set up, isn't that correct?

A. No. I mean it from the viewpoint of basic bookkeeping. This does not tell the complete story.

Q. Would the setting up of those additional entries, which you say are not in that book, make any difference in the amount of income which each partner should report?

Mr. Campbell: Objected to as calling for conclusion.

Mr. Avakian: That is calling for his answer as an expert accountant. I think it is proper.

The Court: Let us have the previous answer. I do not think he completed his answer.

(Testimony of Sol Sanford Ezralow.)

(Answer read.)

The Court: Did you complete your answer?

A. Yes.

The Court: You may answer the question.

A. Yes.

Q. In what way?

A. My understanding of the agreement, to be properly reflected [1809] on these records—it may be my understanding is incorrect—

Mr. Avakian: Let me restate—

The Court: I don't know how we are going to get along if you keep interrupting the witness.

Mr. Avakian: He is stating his own understanding.

The Court: Let us have the question.

(Question read.)

A. Yes.

Q. In what way?

A. Frank Cavani should not report any income.

Q. Even though he is a partner?

A. He is not a partner until such time as Mr. Remmer gets his 15 thousand dollars.

Q. Let me restate again the basis for this question. If Mr. Cavani's arrangement with Mr. Remmer is that Mr. Cavani is to become immediately a partner, sharing in the profits of the business, and that in view of the fact that Mr. Remmer has put up the investment and Mr. Cavani has not put up any investment, Mr. Cavani is to pay for his interest

(Testimony of Sol Sanford Ezralow.)

in the business out of his profits, by leaving them in the business, would it make any difference on the amount of profit that each partner should report in his tax return, whether the 15 thousand dollar indebtedness from Mr. Cavani to Mr. Remmer is set up in the books or not?

Mr. Campbell: Objected to as assuming facts not in evidence. [1810]

(Question read.)

The Court: I don't understand that is the situation here.

Mr. Avakian: That is Mr. Cavani's testimony. He became a partner in the business and he was to pay for his one-fourth interest out of the profits at a figure of 15 thousand dollars.

The Court: Objection sustained.

Mr. Avakian: May we read Mr. Cavani's testimony to your Honor then? That is his testimony.

The Court: De we have to stop and read that record now?

Mr. Avakian: I think we can find it in just a moment.

The Court: My recollection of it is that he was to get a one-fourth interest for 15 thousand dollars.

Mr. Avakian: He was to become immediately the owner of a working interest in the profits and he was to acquire interest in the assets of the business for 15 thousand dollars when he built that up out of his profits. It is the same sort of arrangement as the agreement that is in writing with Mr.

(Testimony of Sol Sanford Ezralow.)

Kyne, same sort of arrangement, your Honor. From page 1658 from the transcript, which is part of Mr. Campbell's direct examination of Mr. Cavani, there is this testimony. The question is relating to 110 Eddy:

"Q. After you took over the active management of [1811] the place, what arrangement did you have for compensation?

"A. Well, Mr. Remmer gave me the same compensation he was giving me at the 21 Club in El Cerrito.

"Q. What was the proposition he gave you?

"A. I was to get 25 per cent of the business.

"Q. You say you were to get?

"A. Yes, sir.

"Q. Will you explain what you mean by that?

"A. Well, that is what he told me, I was going to get 25 per cent of the business.

"Q. When were you given that?

"A. As soon as I went to work, as soon as I took charge of 110 Eddy, right around May of that year.

"Q. Did you have any written agreement of any kind? A. No, not at all.

"Q. Will you state whether or not that was to be 25 per cent of the profits or 25 per cent of the assets of the business?

"A. The whole thing."

Now I submit that this is testimony that he had a 25 per cent in the profits of this business from the time he went in in 1943.

(Testimony of Sol Sanford Ezralow.)

The Court: You mean to say that he was to share the profits regardless of whether or not the 15 thousand [1812] had been paid?

Mr. Avakian: The whole agreement was that he was to pay 15 thousand dollars and he was to become immediately a partner; in other words, he was given credit for the 15 thousand dollars which he was going to pay later on, but his testimony is he immediately became a partner in the place. Now my question to this witness is that if he immediately became a partner to the extent of 25 per cent interest, then would it make any difference in taxing the profits of that partnership whether his 15 thousand dollar liability was set up in the books or not. That is my question.

The Court: But the evidence is he wouldn't be a partner until the 15 thousand dollars was paid.

Mr. Avakian: I just read it, your Honor. He said he was to get it immediately—"As soon as I went to work, as soon as I took charge of 110 Eddy, right around May of that year."

Mr. Campbell: May I see the transcript?

The Court: Yes.

Mr. Campbell: Now, if the Court please, the portion read is on its face the proposition made to Mr. Cavani. He testified the proposition was made to him by Mr. Remmer. Further along in his testimony as to what actually took place, reading from page 1666:

"Q. Mr. Cavani, did you pay anything, inci-

(Testimony of Sol Sanford Ezralow.)

dentally, with regard to acquiring your 25 per cent interest [1813] in the 110 Eddy Club?

"A. No, not a cent.

"Q. Will you state whether or not you had any arrangements with any one whereby your share of profits was accumulated for that purpose?

"A. That is right.

"Q. With whom did you have that arrangement?

"A. Mr. Remmer.

"Q. What was the amount of interest that was to be accumulated for your 25 per cent interest?

"A. My part of the payment was fifteen thousand.

"Q. For the 25 per cent interest?

"A. Yes, sir.

"Q. And what were your arrangements as to how that fifteen thousand was to be paid?

"A. Well, took it out of the profits as we go along.

"Q. Now do you know how much of that had accumulated by the end of the year 1946?

"A. Their record should be in the book.

"Q. What is your recollection?

"A. I don't know. I couldn't answer that because the bookkeeper took care of all the financial end."

Now this from page 1668 and recess was taken at that time until Monday morning:

"Q. Mr. Cavani, before the recess on Thursday you [1814] were testifying concerning the 110 Eddy Street bar and I believe you stated that you had

(Testimony of Sol Sanford Ezralow.)

some interest in that establishment, is that correct?

"A. That is correct.

"Q. What was the extent of your interest?

"A. Twenty-five per cent.

"Q. And when did, or when were you to receive that 25 per cent interest?

"A. Well, when my part was paid.

"Q. How much was to be paid for your part?

"A. Fifteen thousand dollars."

Mr. Avakian: That is exactly it, your Honor.

Mr. Campbell: Now the first part of the testimony which Mr. Avakian read was relative to the proposition that was made to him. The questions and answers which I have read is with reference to what the arrangement actually was, which was that was to be acquired by payment of the 15 thousand dollars, that he was to get his 25 per cent interest when it was paid, and I submit the record, your Honor.

Mr. Avakian: Now, your Honor, the first statement that Mr. Campbell read was a direct statement by Mr. Cavani that he was to pay the 15 thousand dollars out of his share of the profits. Now we have here the same agreement that we had in the Menlo Club that your Honor ruled on before, a partner who puts up investment has arrangement with a partner who does not [1815 put up an investment to share the profits immediately, and the new partner would use his share of the profits to pay for the interest in the assets which he is acquiring.



(Testimony of Sol Sanford Ezralow.)

We have here an interest in the profits immediately to be paid as they go along for interest in the assets of the business. Now Mr. Cavani's statement that I read and Mr. Cavani's statement that Mr. Campbell read in the first portion of the testimony both show that the arrangement was that Mr. Cavani immediately got one-fourth interest in the profits, that one-fourth interest was entered in the books as they went along. Now my question to this witness is that if that is the arrangement between the parties, there is to be an immediate sharing of profits to the extent of 25 per cent, did Mr. Cavani, with that 25 per cent immediately, to be used as a means of paying for his interest in the business, does it make any difference in the amount of income that is reported by each partner, whether the obligation to pay for the interest is actually set up in the books or not. That is my question to this witness.

The Court: He may answer the question.

Q. Do you understand the question, Mr. Ezralow?

A. I understand the question, yes. There is one part you said that I can't agree from what I heard Mr. Cavani say. You said many things and finally asked the question the last part of your whole statement.

Q. Would you like to have me reframe the facts upon which I [1816] wish you to base your answer?

A. I would like to have you state the part of the question.



(Testimony of Sol Sanford Ezralow.)

Mr. Avakian: I will reframe it.

Q. Mr. Ezralow, if the agreement between Mr. Remmer and Mr. Cavani were that Mr. Cavani was to receive immediately a 25 per cent interest in the profits of the business and that he was going to use his share of the profits as the means of paying off the 15 thousand dollar price for the interest in the business, would it make any difference in the amount of income to be reported by the partners, Mr. Remmer and Mr. Cavani, whether or not Mr. Cavani's 15 thousand dollar obligation was set up in the books? A. No.

Q. But in order to have the full facts of the arrangement set forth in the books, proper accounting would call for setting up an account which would show the 15 thousand dollar obligation, is that correct? A. Yes.

Q. And isn't that what you meant when you stated there should be additional entries if that is the arrangement?

A. If that is the arrangement, yes.

Q. Now these books were kept by a Mr. Slater, who is the accountant, I take it, in connection with 110 Eddy? A. Yes, sir. [1817]

Q. And he kept the books, did he not?

A. I assume he did.

Q. Mr. Slater is a public accountant?

A. Yes.

Q. Is there a distinction between a public accountant and certified accountant under the laws of California? A. Yes.

(Testimony of Sol Sanford Ezralow.)

Q. A certified public accountant is a higher level in the profession, is that right? A. Yes.

Q. Have you not found, both in your experience as a revenue agent and in your experience as a certified public accountant in private practice, that quite frequently public accountants set up books with which you, as a certified public account, are not satisfied as a full and adequate set of books?

Mr. Campbell: Objected to as incompetent and immaterial and certainly not within the scope of any direct.

The Court: Objection sustained.

Mr. Avakian: That is all.

(Witness excused.)

JAMES C. McKAY,

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination

By Mr. Campbell:

Q. Will you state your name, please?

A. James C. McKay. [1818]

Q. Where do you reside, Mr. McKay?

A. Washoe Valley.

Q. What is your business or occupation?

A. I have been in real estate, gambling business. I am a rancher.

Q. Are you acquainted with the defendant, Elmer Remmer? A. Yes, I am.

(Testimony of James C. McKay.)

Q. For how long a period of time have you known him? A. Since 1920.

Q. Now have you since that time been associated with him in any business? A. Yes, I have.

Q. And in what business or businesses?

A. Cal-Neva Lodge.

Q. Is that the only business venture in which you were ever associated with Mr. Remmer?

A. Yes, it was.

Q. You are a partner, are you not, of Mr. William Graham? A. Yes, sir, I am.

Q. Were you in court the other day when Mr. Graham testified concerning the details of the organization of the Cal-Neva Lodge?

A. No, I was not.

Q. Do you recall when you and Mr. Graham took over Cal-Neva Lodge?

A. '29, I think it was. [1819]

Mr. Gillen: The defense is willing to stipulate that Mr. McKay's testimony would be primarily the same as Mr. Graham's, if counsel wishes to accept, in the interest of time.

Mr. Campbell: Yes, that is his testimony with relation to the original acquisition and conduct and final sale of his interest to Mr. Remmer would be the same substantially as that given by Mr. Graham.

Mr. Gillen: Yes, everything that Mr. Graham has testified to, in the interest of time, we are willing to stipulate that Mr. McKay's testimony would be the same.

Mr. Campbell: So stipulated.

(Testimony of James C. McKay.)

Q. Now, Mr. McKay, the testimony indicated that you and Mr. Graham sold out your two-thirds interest in Cal-Neva to Mr. Remmer in 1946, do you recall that? A. Yes, sir.

Q. Now up until that time, up until the time that you and Mr. Graham sold your interests and from the time of the inception of the business, you say 1929, were any dividends declared?

A. I just don't recollect that.

Q. Do you recall whether or not a dividend had been declared with relation to the year 1934?

A. No. There may have been, but I don't remember.

Q. Do you recall any dividend ever having been declared?

A. It seems like there was something sometime or other, ten thousand or something, I am not sure. [1820]

Q. Do you recall for what year that was declared? A. No, I don't.

Q. Approximately what year?

A. I have no recollection. I do not remember the exact date of it.

Q. Mr. Graham testified a dividend was declared with relation to the year 1934, would you say that would be correct?

A. I would say it was if he testified to it.

Q. Now during the period of time that you and Mr. Graham were still interested in Cal-Neva Lodge together with Mr. Remmer, will you state whether

(Testimony of James C. McKay.)

or not any salary was paid to Mr. Remmer, if you know?      A. Not that I know of.

Q. Now do you recall an occasion in about the month of May, 1937, when a revenue agent by the name of A. V. Brady made an examination of the books and records of the Cal-Neva? Do you recall the instance?

A. I believe I do remember Mr. Brady.

Q. You are acquainted with Mr. Brady, are you?

A. Yes, I am.

Q. Was that the occasion of your first becoming acquainted with him?      A. It could have been.

Q. You recognize Mr. Brady here in the court room?      A. Yes, I do. [1821]

Q. Do you recall, with respect to that examination, whether or not an individual income tax return for the year 1934 was secured by Mr. Brady from Mr. Remmer?      A. I do not remember it.

Mr. Gillen: May I suggest—that exhibit is in evidence counsel just asked about. We will stipulate it is. We tried to stipulate to all testimony to save time and it was accepted and we are still going on.

Mr. Campbell: If the stipulation covers this matter and the time of that examination that the return was picked up—

Mr. Gillen: My stipulation was intended to cover both direct and cross-examination and any redirect or recross, that Mr. McKay would testify substan-

(Testimony of James C. McKay.)  
tially the same as to the subject matters within Mr. Graham's knowledge.

Mr. Campbell: Very well, I will accept that stipulation and I will have no further questions of Mr. McKay.

Mr. Gillen: No cross-examination.

(Witness excused.)

Mr. Campbell: At this time I would like to recall Mr. Mooney, if the Court please.

The Court: Yes.

Mr. Gillen: For the record, Mr. Mooney is being recalled for further direct or redirect or what?

Mr. Campbell: If the Court please, I wish to recall him at this time for further identification with reference to defendant's [1822] Exhibit E for identification.

Mr. Gillen: In the nature of redirect?

Mr. Campbell: It would be redirect examination, concerning which there is an exhibit offered in evidence.

**MR. MOONEY,**  
having been previously sworn, testified as follows:

Redirect Examination

By Mr. Campbell:

Q. Mr. Mooney, I am going to show you a document which has been marked defendant's "E" for identification and which purports to be a 1944 amended return for Helen Remmer, and which I believe you identified when you previously appeared

(Testimony of Patrick Mooney.)

here. Will you look at it and see if you recognize it, Mr. Mooney? A. Yes, Mr. Campbell.

Q. Is that your handwriting, Mr. Mooney?

A. Yes, Mr. Campbell.

Q. And do you recall when you prepared that?

A. I believe it was in either the last of '45 or '46.

Q. Now did you at the same time prepare a similar document with the name of Elmer Remmer on it? A. Yes, sir.

Q. Now, will you state whether or not either of those documents, that is to say, copies of those documents, originals of those documents, were filed with the Collector of Internal Revenue?

A. I can't say. The money was paid.

Q. Do you recall whether or not the returns were filed? [1823]

A. I don't know. I don't believe I ever could get Mr. Remmer to get his signature on it.

Mr. Campbell: At this time I will ask to have this document, purporting to be an affidavit, marked for identification as 159 for identification.

Q. Now, Mr. Mooney, after you prepared this document, "E" for identification, and you say a similar document with regard to Elmer Remmer, for the year 1944, did you advise Mr. Remmer as to whether or not such amended return should be filed?

A. No, I didn't advise Mr. Remmer of that. Willie Kyne gave me the figures. He said the B. & R. Smoke Shoppe—

Q. I didn't ask you for conversation, Mr.

(Testimony of Patrick Mooney.)

Mooney. I asked you if you had ever informed Mr. Remmer that you had prepared these amended returns and they should be filed?

A. As far as I know, yes.

Q. You did?

A. I wouldn't say positively.

Q. Were these matters more freshly in your mind in 1948 than they are today?

Mr. Gillen: Objected to as calling for opinion, conclusion and speculation.

The Court: Objection will be sustained.

Q. Mr. Mooney I am going to show you a document which has been marked 159 for identification, and I will ask you to read this and after you have examined it, I will then ask you some [1824] questions.

May I suggest a recess while we do this?

(Jury and alternate jurors admonished and recess taken at 2:30.)

2:45 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

**MR. MOONEY**

resumed the witness stand on further

Redirect Examination

By Mr. Campbell:

Q. Mr. Mooney, is that your signature on that document?

A. Yes, sir.



(Testimony of Patrick Mooney.)

Q. And will you state whether or not this document was signed and sworn to by you on the 13th day of April, 1948, as shown hereon?

A. I signed it on April 13, 1948.

Q. Now does this document refresh your recollection as to whether or not as of April 13, 1948, the amended returns for the year 1944 which you prepared had been filed?

Mr. Gillen: I would like the Court to look at that document. There is nothing in the document that calls for refreshing any recollection, because there is no departure from the answer that the witness has previously given from his own recollection.

The Court: What number is that exhibit?

Mr. Campbell: The return is Exhibit "E" for identification. [1825] The document which he has identified, the affidavit which I have asked him to refresh his recollection, is 159 for identification.

The Court: He may answer the question.

Q. Do you have the question in mind, Mr. Mooney?

A. Will you repeat the question?

Q. Does that refresh your recollection as to whether or not about the 13th day of April, 1948, the amended return for 1944, exhibit "E" for identification, had been filed?

Mr. Gillen: Just a moment. I think perhaps I didn't make myself clear, your Honor. I want your Honor to look at the affidavit, not Exhibit E.

The Court: I don't see any necessity. He can answer this question without any necessity of me reading the document.

(Testimony of Patrick Mooney.)

Q. Will you answer the question?

A. As far as I know the returns or the posting slips were filed.

Q. Were they filed or not?

A. As far as I remember. I do not know whether they were filed or not except the posting slips for the money. I have forgotten whether the returns were ever presented.

Q. Were the facts with relation to the filing of those returns, amended returns, fresh in your mind when you made this statement which you have read, plaintiff's Exhibit 159 for [1826] identification?

Mr. Gillen: Just a moment. May it please the Court, you have already ruled on that same question. It is calling for his opinion, conclusion, guess and speculation as to refreshes his memory.

The Court: I think this objection is sustained.

Q. Mr. Mooney, based upon your examination of this affidavit, 159 for identification, which is dated April 13, 1948, did this affidavit speak the truth as you then knew it at the time you made the affidavit? A. As far as I know, yes.

Mr. Gillen: Pardon me just a moment—we make the same objection.

The Court: The answer may stand.

Mr. Campbell: I am going to offer this in evidence as plaintiff's Exhibit 159.

Mr. Gillen: Now I would like your Honor to see it. It is no departure from the man's testimony on the stand, your Honor. Before your

(Testimony of Patrick Mooney.)

Honor rules, I would like to make a further observation to your Honor and offer a further ground.

The Court: Now, Mr. Gillen?

Mr. Gillen: My further objection, your Honor, is that it is hearsay as to the defendant Remmer and it is not a departure or contradiction of the witness' testimony given here in court, both on this occasion and on the occasion of his [1827] earlier appearance. It is merely a summarization of the same testimony, not a departure or contradiction. That could only be used as an exception to the hearsay rule if the document contradicted the testimony of the witness and counsel could have this witness declared a hostile witness and call upon your Honor to release him of the obligation of being bound by his own witness' testimony.

The Court: From what I have heard here now, as you call my attention to the fact ruling was reserved on the exhibit "E" the other day, at the request of Mr. Campbell, and as I understand the situation here now, there is no recollection on the part of Mr. Mooney whether or not that Exhibit "E" was ever filed.

Mr. Gillen: That is correct, except he did testify the posting in the collector's office showed the money was paid.

The Court: Therefore Exhibit "E" is not admitted in evidence.

Mr. Campbell: I have no further questions of this witness. I will withdraw the offer of Exhibit 159.

(Testimony of Patrick Mooney.)

Recross-Examination

By Mr. Gillen:

Q. Mr. Mooney, in answering a question by Mr. Campbell a few moments ago, you stated that you had no present recollection of whether the amended return for Helen Remmer, which is defendant's Exhibit E for identification, or an identical one for [1828] Elmer Remmer, prepared by yourself, had ever actually been filed.

A. I do not know whether it has. I have forgotten. It may have been filed and got lost. Once in a while a return gets lost.

Q. Now you did state, however, that the posting showed that they had been filed?

Mr. Campbell: I object to that. That wasn't the testimony.

Mr. Gillen: Let's get the record. I think I can reframe the question.

Q. Mr. Mooney, I think what you stated was—and correct me if I am wrong—that you had no recollection of whether the amended returns that you prepared for Elmer Remmer and Helen Remmer were filed or were not filed, but that the posting slips showed the money was paid, is that correct? A. Correct.

Q. Now what are the posting slips, will you advise us on that?

A. The posting slip goes into the office as a credit or debit, as the case might be.

Q. And there has to be money to balance that posting slip?

(Testimony of Patrick Mooney.)

A. There must be money. That money goes in to the cashier.

Q. So the posting slip showed that the additional money called for on the amended returns had been paid?

Mr. Campbell: Objected to as assuming a fact not in [1829] evidence.

The Court: It seems to me that was the evidence.

Mr. Campbell: No, there is here in evidence, as Exhibits 13 and 14, records of all of the posting and payments, if the Court please, has already been put into evidence here.

The Court: He is talking about Mr. Mooney's testimony.

Mr. Gillen: Yes, I was summarizing his testimony.

The Court: Read the question.

(Question read.)

Mr. Campbell: I object on the ground it is not the best evidence.

The Court: Objection will be overruled.

Q. Do you have the question in mind, Mr. Mooney? Would you rather have me repeat it?

A. I would rather have you repeat it.

Q. All right, sir. My question is, your testimony is that the posting slips showed that the additional money called for in those amended returns for Elmer Remmer and Helen Remmer had been paid?

A. Yes.

(Testimony of Patrick Mooney.)

Q. Mr. Mooney, do you recall what additional amount was called for on the amended return to be paid or to have been paid by Elmer Remmer and Helen Remmer?

A. Six thousand dollars, three thousand dollars each.

Q. And is that the amount shown in defendant's Exhibit "E" for [1830] identification?

A. That is the amount called for.

Q. Three thousand dollars from Helen Remmer and three thousand dollars from Elmer Remmer, or six thousand dollars?

A. Six thousand dollars total; three thousand from each.

Q. Each spouse? A. Yes, additional.

Q. Mr. Mooney, was that six thousand additional that you told us about six thousand tax due or income? It was six thousand additional income, was it not, reported?

A. Six thousand additional income from the B. & R. Smoke Shoppe, 50 Mason Street.

Q. In other words, the three thousand apiece that you mention was not three thousand additional tax, but three thousand dollars additional income report for each spouse? A. Income, yes.

Mr. Gillen: I think that is all.

#### Redirect Examination

By Mr. Campbell:

Q. Mr. Mooney, I am going to show you plaintiff's Exhibits 13 and 14, the certificate of assess-

(Testimony of Patrick Mooney.)

ments and payments of Elmer F. Remmer and Helen L. Remmer, and ask you if you are familiar with these forms, Mr. Mooney?

Mr. Gillen: Just a moment. It is my recollection, your Honor, that they were introduced during the testimony of Mr. Forrester, the deputy collector for this district, of Nevada, [1831] and it is my recollection—and I would like to have the opportunity to find it—that Mr. Forrester had something to say about either the inaccuracy or incompleteness of those two documents. I think we can find it, your Honor, immediately.

The Court: Well, he may answer the question.

Mr. Campbell: He stated he was not familiar with these documents, which probably answers the question, Mr. Gillen.

Mr. Gillen: You mean Mr. Mooney stated he was not familiar with those documents?

Q. Do you know what this type of document is?

A. No, sir.

Q. You never had anything to do with this type of document?

A. Not that I know of.

Mr. Campbell: At this time I am going to offer in evidence the affidavit, plaintiff's Exhibit 159, in the Court pleas, based upon the testimony and cross-examination that he has no present recollection of the filing, and I offer on the basis of past recollection recorded.

Mr. Gillen: Your Honor has already ruled on that matter. Your Honor said that this matter was inquired into for the purpose of determining what

(Testimony of Patrick Mooney.)

should be presented to your Honor on defendant's Exhibit E. Your Honor has found that defendant's Exhibit E should not be admitted in evidence and ruled on that. The 159 was withdrawn as a moot matter because your Honor ruled against the admission of "E." [1832]

The Court: Objection to the exhibit will be sustained.

Mr. Campbell: That is all.

Mr. Gillen: No further questions.

(Witness excused.)

Mr. Campbell: If the Court please, Mr. William Kyne, who has previously been on the stand, has made request of Mr. Gillen and myself, I believe, that he be permitted to take the stand to correct a portion of his testimony, and I will ask that he be called at this time.

Mr. Gillen: We will either do that or be willing to stipulate.

Mr. Campbell: I think Mr. Kyne desired that he voice it in the record.

#### MR. KYNE

having been previously sworn, testified as follows:

#### Direct Examination

By Mr. Campbell:

Q. Mr. Kyne, you have been previously sworn?

A. Yes, sir.

Q. I believe you stated to Mr. Gillen and my-



(Testimony of William E. Kyne.)

self yesterday and again today that you desired to correct certain of your testimony with relation to the matter of powers of attorney given to Mr. Remmer, is that correct?      A. Yes, sir.

Q. Will you state what it is that you have in mind in that connection? [1833]

A. I have a letter here from my attorney. I had him look into the files and see what powers of attorney were given to Mr. Remmer and aside from the power of attorney given to Mr. Remmer while I was in the service, there appears to be no other.

Q. Do you have a copy of that power?

A. No, I have not.

Q. And you refer to the power of attorney that was produced and put in evidence here?

A. Yes, sir.

Q. And that is the only power of attorney which you have given Mr. Remmer?      A. Yes, sir.

Q. Now in that connection, what powers of attorney did you have from Mr. Remmer?

A. I believe there is one power of attorney from Mr. Remmer to me.

Q. Do you have that power of attorney?

A. I believe there is a record of it in the Bank of America.

Q. That is the same power of attorney which was introduced here, giving you power of attorney to sign checks?      A. I believe that is it.

Q. And so far as you know, there was no other

(Testimony of William E. Kyne.)

power of attorney from you to Mr. Remmer or from Mr. Remmer to you?

A. That's correct.

Mr. Campbell: Do you have any question in this connection? [1834]

Mr. Gillen: Yes.

### Cross-Examination

By Mr. Gillen:

Q. Mr. Kyne, what bothered you and what you were trying to straighten out in that testimony was that you were asked by me on cross-examination if it was your recollection, prior to the power of attorney you gave Mr. Remmer at the time you entered the service, if there was not in existence an earlier power of attorney and you recall me asking you that question on cross-examination?

A. Yes.

Q. And on cross-examination you answered you believed there was in existence an earlier power of attorney, earlier than the one than the time that you were in the service?

A. That was why I had the files searched.

Q. So you searched the papers and found no other written power of attorney other than the power of attorney that you gave in writing as prepared by Mr. Haughey at the time you were about to go in the service?

A. That is correct.

Q. You did not want to leave for the service without giving power of attorney?

A. No.

Q. It is true you and Mr. Remmer did have an

(Testimony of William E. Kyne.)

oral understanding that you would sign checks for each other, is that correct?

A. Yes, sir. [1835]

Mr. Gillen: That is all.

Mr. Campbell: While Mr. Kyne is on the stand, if the Court please, I wish to recall him as to redirect as to one matter.

The Court: Very well.

**Redirect Examination**

By Mr. Campbell:

Q. Mr. Kyne, I am going to show you plaintiff's Exhibit 153 for identification and ask you if you will examine that.

A. Yes, sir.

Q. Is that your signature?

A. Yes, sir.

Q. And was this document subscribed and sworn to by you on or about the 15th of November, 1945?

A. Yes, sir.

Mr. Gillen: May I see that document?

Mr. Campbell: Yes.

Q. Mr. Kyne, with relation to the 110 Eddy Street, as of the month of November, 1945, will you state what the interests were in that concern?

A. Well, the money put into the place was supposed to be met with and then we would be partners.

Q. Now as of that date, as of the month of November, 1945, who owned the business?

Mr. Gillen: Just a moment—that is calling for opinion and it is cross-examination. We have ex-

(Testimony of William E. Kyne.)

hibits introduced by the [1836] government. Now he is asking Mr. Kyne to enter an opinion.

The Court: He may answer the question.

A. The books would show that.

Q. Would you answer my question? I am asking you? A. I say the books would show that.

Mr. Gillen: Mr. Kyne has testified the books reflect the partnership of that enterprise at that time and the books are the best evidence. That is the same objection we have heard constantly from the prosecution, and properly so.

The Court: He may answer the question.

A. That is the only answer I have, that the books would show it.

Q. What was your interest at that time?

A. The books would show that.

Q. What is your recollection of your interest?

A. I forget.

Q. You do not recall what your interest was then? A. No, I don't.

Q. Did you know at that time what it was?

A. No, I don't.

Q. Did you at that time in November of 1945?

Mr. Gillen: What was the question?

Q. Did he know in November of 1945 what his interest was.

Mr. Gillen: I submit, if he knew in 1945 and remembered he would remember now what his interest was. He has explained [1837] to Mr. Campbell as best he can whatever his interest was is reflected in the books.

(Testimony of William E. Kyne.)

Mr. Campbell: Well, I will withdraw that.

Q. Does this Exhibit 153, for identification, which you identified as being your signature, refresh your recollection in that regard?

Mr. Gillen: I am not fearful of responses, but I do not quite follow counsel. This is a government witness, counsel's own witness. He called him as a witness and Mr. Kyne was on the stand some four days and related to his best recollection, refreshing his recollection from books and stated what the status was. It appears he is attempting to impeach his own witness in further direct examination. I think your Honor has in mind Mr. Kyne was pretty well informed witness, when he had the books in front of him, he recalled what transpired in regard to various businesses. This appears to be an attempt to impeach his own witness on something that the witness has already testified to with the assistance of books that were kept at the time.

The Court: He merely stated he did not remember. If there was a document here which might refresh his memory, I do not see any reason why it could not be used. It isn't a question of contradicting any of his testimony.

Mr. Gillen: No, but he already testified to the status [1838] and refreshed his recollection from books kept as the thing went along. Now he is showing him an affidavit—that would be hearsay—taken from him in North Carolina or South Caro-

(Testimony of William E. Kyne.)

lina while he was in the army, when he did not have the books in front of him.

Mr. Gillen: I respectfully suggest he be shown the exhibits which were introduced through his testimony, which were books of various enterprises, as the best evidence to refresh his recollection, because they were accounts that were kept at the time. Here is hearsay affidavit made in South Carolina.

The Court: I do not want to put myself in the position of directing counsel how to conduct his examination.

Mr. Gillen: But your Honor is the arbiter of rules of evidence.

The Court: I can't see any harm in answering this question. Objection is overruled.

A. It does not refresh my memory.

Q. Mr. Kyne, will you examine this document. Will you read it through——

A. I have read it through.

Q. ——and state whether or not it sets forth the truth as you understood it at the time you made that affidavit? A. Yes.

Mr. Gillen: We submit the witness already stated it does not refresh his recollection as to the facts stated thereon or [1839] existing facts. We have exhibits introduced by the prosecution. Those were exhibits he used on direct examination and shown on direct examination to refresh his recollection as to various transactions and enterprises over the years.

(Testimony of William E. Kyne.)

The Court: He has already answered the question.

Mr. Gillen: If he has answered the question, I ask that the answer be stricken and I be allowed to make an objection.

The Court: It may go out. The objection is overruled. He may answer the question.

(Question read.)

The Court: The answer is stricken. Now what is your answer?

A. You say the answer was stricken?

The Court: Yes, the question is put to you afresh.

(Question read.)

A. It does.

Q. Now will you state at this time your understanding as to the ownership of the business known as 110 Eddy in 1945?

Mr. Gillen: Just a moment, may it please the court. We object as to cross-examination of his own witness and improper redirect or direct. It is already asked and answered. The witness has said that the books would refresh his recollection as to the status. Those books were introduced, not by the defense, but by the prosecution, in support of testimony of this witness and I submit the matter is already before the jury and [1840] already in the record.

Mr. Campbell: I will withdraw the last question and offer the document in evidence on the basis

(Testimony of William E. Kyne.)

of the witness' testimony that he does not recollect at this time but that this document states the truth as he knew it at that time, and submit the document to the Court.

Mr. Gillen: I ask your Honor to reserve ruling until we have an opportunity, without taking up the time of the jury or the Court, to show to your Honor how this witness testified on direct and cross-examination with the aid of the books that he participated in keeping, as reflecting the true status. Counsel is doing a very peculiar thing here to me—and I have been trying cases for 25 years almost. He has introduced some records kept in the ordinary course of business of the man who kept them personally, was shown those records, identified them and from them and with the aid of them testified to the status of things. Now he is producing an affidavit made in 1945 when the man is in the service somewhere in North or South Carolina. We have evidence as to the books that were kept in the ordinary course of business which were introduced at the time. I believe, your Honor, that the ruling should be reserved. May we be afforded an opportunity to present to your Honor particular portions of the transcript that reflects that testimony of Mr. Kyne.

Mr. Campbell: I would like to be heard on that matter. [1841] I would also like the Court to examine this particular document and I believe its competency and materiality will be apparent.

Mr. Gillen: May I ask counsel, through your



(Testimony of William E. Kyne.)

Honor, is he trying to impeach his own witness, who was on the stand for some four days? If he is, I am going to have another form of objection.

The Court: The theory on which this was offered was that it would call the witness' attention to a fact that he appeared at this time to have no recollection.

Mr. Gillen: The witness at the very outset of his testimony said he would have to rely on the books that were kept at the time in the ordinary course of business and he also said it didn't refresh his recollection and in answer to the question whether or not that was true as he recalled it—

The Court: What is your theory in offering this exhibit, Mr. Campbell?

Mr. Campbell: My theory is this—past recollection recalled as of the time that the document speaks about. Now so far as the books and records are concerned, it is true they were identified.

The Court: I will hear you. I would like to have some authorities on that question supporting that theory.

Mr. Campbell: May we defer this matter until tomorrow [1842] morning and go on with some other witness in the meanwhile?

The Court: Yes.

## ARTHUR PRATT

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

## Direct Examination

By Mr. Campbell:

Q. Will you state your name?

A. Arthur Pratt.

Q. Where do you live?

A. Fresno, California.

Q. What is your present business or occupation?

A. I have a cigar store, restaurant and beer tavern.

Q. Are you acquainted with the defendant, Elmer Remmer? A. I am.

Q. How long have you known him?

A. Since about approximately 1936.

Q. And I will ask you whether or not you were acquainted with one Clarence Bent?

A. I was.

Q. Mr. Bent is now deceased, is that correct?

A. Yes.

Q. Do you recall when he died?

A. No, I don't recall the date of his death, but I was at his funeral. I imagine it was in——

Q. You do not recall the date?

A. No, other than I think it was the early part of 1943. [1843]

Q. Now were you at any time associated with Mr. Remmer in any business enterprise?

A. In 110 Eddy.

Q. Is that the only business enterprise in which

(Testimony of Arthur Pratt.)

you have ever been associated with Mr. Remmer?

A. Yes.

Q. Now prior to your association with Mr. Remmer in that business, did you have any association or any contemplated association with Mr. Bent in that business at 110 Eddy Street?

A. Yes.

Mr. Gillen: Just a moment. I think that question was rather confusing question and the answer does not tell us which it was, whether an actual interest or contemplated interest. Both were asked.

Mr. Campbell: I am just coming to that.

A. Well, it was a contemplated interest.

Q. Now was any actual interest acquired by you prior to the time you became associated with Mr. Remmer in the business?

A. No.

Q. Incidentally, prior to your entry into that association with Mr. Remmer at 110 Eddy Street, what was the name of the establishment at 110 Eddy Street?

A. It was known as 110 Eddy then.

Q. Was it also known as the Crystal Bar?

A. If it was, I never heard it mentioned that way. [1844]

Q. Or the Crystal Tavern?

A. Not to my knowledge. It was always known, my knowledge of the place would go back probably five or six years to that date, and always known as 110 Eddy Bar, as I knew. It could have been licensed under another name, but it was generally known as 110 Eddy.

Q. Now at the time of your association in 110

(Testimony of Arthur Pratt.)

Eddy Street with Mr. Remmer, did you invest any money in the enterprise?      A. I did.

Q. Do you recall the date of that investment?

A. No.

Q. Do you have any records which would indicate that?

A. No, I have no records, but I imagine the date would be possibly the latter part of July or August, 1942, I think is approximately the date.

Q. What was the amount of your investment?

A. \$3400.

Q. And to whom did you pay that amount?

A. Well, now that I can't recall, but I gave it either to Mr. Kyne, and that was who I think I gave it to, or left it with Mr. Syl Lando for Mr. Kyne.

Q. Who did you have your negotiations with as to your acquiring that interest?

A. Mr. Remmer.

Q. Were those entirely with Mr. [1845] Remmer?      A. Yes.

Q. And how did it happen that you gave money to Mr. Kyne or left money for Mr. Kyne?

A. Well, Mr. Remmer wasn't always there. He was out of town quite a lot and it was understood that I was to leave the money.

Q. Who told you to leave it with Mr. Kyne?

A. Nobody.

Q. How did you happen to leave it with him?

A. Well, because he was more or less acting for Mr. Remmer.

Q. What were you to acquire for your \$3400?

(Testimony of Arthur Pratt.)

A. I was to acquire one-third. In other words, it wasn't set at \$3400. I invested \$3400 but the total amount was to be—the figure was never arrived at—but \$3400 is what I did invest.

Q. Was the amount of your investment contingent upon some event?      A. No.

Q. How was the amount arrived at?

A. Well, the amount arrived at was that is how much up to that point I had go toward the investment of a one-third and I could never find out what the one-third actually called for.

Q. What did you understand that you received for your \$3400?

A. One-third interest in the business, bar at 110 Eddy.

Q. Did you at any time have an agreement or an understanding with Mr. Remmer, or any one else, as to how much you were to pay in total for the one-third interest?

A. Well, no, because I could never get a statement given to me [1846] whether I owed or not.

Q. Now after you paid that money in later 1942, did you take any active part in the business?

A. None whatsoever.

Q. Did you conduct any of the operations there?

A. No, sir.

Q. Did you exercise any supervision over the management of the business?

A. No.

Q. What was your understanding, Mr. Pratt,

(Testimony of Arthur Pratt.)

as to whether or not that was a partnership or what type of business?

Mr. Gillen: I think the term "understanding" is calling for speculation.

Mr. Campbell: I will reframe the question.

Q. Was there any written agreement?

A. No.

Q. There was an oral agreement, was there?

A. Just an oral agreement.

Q. With whom did you have that oral agreement?      A. Mr. Remmer.

Q. Now, will you state what that oral agreement was?

A. Well, we were to give Clarence Bent, who possessed the license and the physical business as of the day we took it, as one representing one-third. Mr. Remmer and myself were to supply the remodelling, refurnishing and credit Clarence [1847] Bent with one-third and regardless of what we put in, that we would have two-thirds of it.

Q. As I understood you, you were to have of that two-thirds, one of the two-thirds, is that correct?      A. That is right.

Q. And it was in connection with that arrangement that you advanced the sum of \$3400?

A. That is right.

Q. Now, do you know, or will you state, who was in active management of the business?

Mr. Gillen: At that time, your Honor?

Mr. Campbell: At the time you advanced this \$3400?

(Testimony of Arthur Pratt.)

A. Until Clarence Bent's death he was the manager.

Q. And do you know who succeeded him as manager? A. No, I do not.

Q. During that period of time were you ever consulted with reference to the operation of the business? A. No.

Q. Now, some time after making that investment you left San Francisco, did you not, Mr. Pratt? A. I did.

Q. And went to the City of Portland, Oregon, I believe, is that correct? A. Yes.

Q. Where you became engaged in [1848] business? A. That is right.

Q. Now, when was it that you left San Francisco?

A. I wasn't a resident of San Francisco. I lived in Vallejo.

Q. When was it that you left the Bay area?

A. In May, 1943.

Q. Now, did you, Mr. Pratt, subsequently dispose of or sell your one-third interest, or whatever interest you acquired by your investment, to any one?

Mr. Gillen: Just a moment. I move that the portion, "whatever interest you acquired from your investment" be stricken. This is Mr. Campbell's witness. He testified he purchased one-third interest.

Q. Did you subsequently sell your interest to any one?

(Testimony of Arthur Pratt.)

A. The only time I sold my interest was to Mr. Remmer in 1944.

Q. You say the only time——

A. Well, you put the question up to I couldn't quite understand, you said at any time.

Q. Well, you did sell in 1944, is that correct?

A. All my interest, which was one-third.

Q. Just prior to selling your interest, did you have negotiations with Mr. Remmer relative to the selling?

A. I did.

Q. And how and where were those negotiations carried on?

A. Over the long distance telephone between Portland and San Francisco. [1849]

Q. And over what period of time did those negotiations take place?

A. Well, I would say possibly over a period of at least two months.

Q. And will you state whether or not those negotiations were personally with Mr. Remmer over the telephone?

A. They were only with Mr. Remmer on the telephone.

Q. Now, as a result of those negotiations you sold your interest, is that correct

A. That's right.

Q. And at the time that you sold your interest, did you execute a bill of sale? Did you sign a bill of sale?

A. I signed a bill of sale after the sale was made.



(Testimony of Arthur Pratt.)

Q. You mean after you agreed to the sale?

A. After I agreed to the sale.

Q. Do you recall the date of the sale?

A. It was after March 15, 1944, I am quite certain.

Q. Now, have you produced with you here your copy of the bill of sale, together with correspondence which you had or received forwarding the bill of sale to you and forwarding your payment in return for such bill of sale? A. Yes.

Q. Will you produce it?

A. Well, the government has it—I haven't the original, but that is a copy of it from the original. I lost the originals. [1850]

Q. You no longer have the originals of those documents?

A. I think my wife threw them away when we moved from Portland back to California this spring.

Q. However, will you state whether or not prior to the time that they were thrown away by your wife—

Mr. Gillen: Just a moment—we don't know whether they were thrown away or not, neither does Mr. Pratt. He says he believes his wife threw them away.

Mr. Campbell: All right.

Q. Do you have them now?

A. To my knowledge I have not and during the recess, the few days down there, I tried to find them and couldn't.

(Testimony of Arthur Pratt.)

Q. You made a search for them at my request, did you not? A. Yes.

Q. I will ask you whether or not in 1947 copies of those documents which were then in your possession, were made by agents of the government?

A. That is right.

Mr. Campbell: I am going to ask to have these three documents which are stapled together, marked 160 for identification.

Q. Will you examine these, Mr. Pratt, and state whether or not, to your best recollection, those are exact copies of the documents which were in your possession which you state you can no longer locate? [1851] A. Yes.

Mr. Gillen: We will stipulate they may be offered in evidence.

Mr. Campbell: Will you stipulate they may be received in evidence? We will offer them.

Mr. Gillen: The wrong term. Everybody makes mistakes.

The Court: They will be admitted in evidence.

Mr. Campbell: At this time I will read into evidence plaintiff's Exhibit 160. Each of these are marked "Copy." (Reads Exhibit 160.) Signed John G. Taffe.

Q. Now, Mr. Pratt, subsequent to the investment by you of \$3,400, and prior to March 21, 1944, the receipt of this letter, had you received from William E. Kyne the sum of two thousand dollars?

A. Yes.

Q. Do you recall when it was received?

(Testimony of Arthur Pratt.)

A. No, I do not. It was possibly some time in the latter part of '43 when I was in San Francisco and I borrowed money, or it could have been that he sent me part of it and I borrowed part of it.

Q. What is your best recollection?

A. Well, my best recollection is that I got a thousand in San Francisco and he sent me the other thousand.

Q. With whom did you have any negotiations relative to your receipt of these two thousand dollars? [1852]

Mr. Gillen: Objected to as asked and answered. He said he borrowed the money from Mr. Kyne.

The Court: Objection overruled.

A. Well, I never had a receipt. He never required any.

Q. Who did you talk to about getting this money? A. Just asked Willie for it.

Q. And subsequently you got it, is that correct?

A. Yes.

Q. And you say no written memorandum of any kind was entered into? A. No.

Q. Were any arrangements made as to any charges to be made on the books of 110 Eddy Street relative to these monies?

A. Well, not to my knowledge. I have never seen any papers for that place.

Q. Have you ever seen any books of account for 110 Eddy? A. Of no kind at any time.

Q. Now, reading from plaintiff's Exhibit 160, document entitled "Bill of Sale": (Reads.)

(Testimony of Arthur Pratt.)

Q. Now, did you execute the original of this bill of sale, Mr. Pratt?

A. That is the one he asked me to take to the notary.

Q. Is this the same bill of sale referred to in his letter of March 21st? A. Yes. [1853]

Q. Did you execute it before a notary?

A. Yes.

Q. And calling your attention to the fact that the letter to you enclosing a bill of sale is dated March 21, 1944, does that assist you in fixing the date on which you executed the bill of sale?

A. Well, whatever the notary would be is the date that I mailed the bill of sale back.

Q. Did you mail it back promptly upon receipt of Mr. Taffe's letter?

A. It would be a matter of five or six days.

Q. Reading the final document in plaintiff's Exhibit 160, a letter on the letterhead of John J. Taffe, dated March 28, 1944, marked "Special delivery." (Reads.) Signed "John J. Taffe." Now, with that letter did you receive the cashier's check in the sum of \$4,800? A. I did.

Q. Now, Mr. Pratt, subsequent to the time that you invested the \$3,400 in 1942 and up until the time that you sold your interest by bill of sale, apparently dated March 25, 1944, did you know who else, if any one, was interested in the business known as 110 Eddy?

Mr. Gillen: Objected to as asked and answered, may it please the Court.

(Testimony of Arthur Pratt.)

The Court: Objection will be overruled. You may answer [1854] the question.

A. Well, the only time that I knew was that when Clarence Bent was alive he was one-third partner, Mr. Remmer was one-third and I was one-third.

Q. And up until the time of his death, were those the only persons you knew that were interested in the business? A. That is right.

Q. After Mr. Bent's death, did you know who, if any one, was interested in the business in addition to yourself? A. I did not.

Q. Now, from the time you made your investment and up until the time of the date that you executed this bill of sale and other than the two thousand dollars which you stated that you borrowed, did you receive any sums of money on account of the profits of the operation of the business?

A. I did not.

Q. And during that same period of time did you at any time receive any reports as to the profit or loss at which the business was operated?

A. I received one letter from Mr. Slater, who was the bookkeeper and auditor.

Q. Do you recall when that was?

A. Well, it was some time after I had left and was in Oregon.

Q. And was that prior to the time you sold out your interest?

A. No, it was in the meantime. It was in '43 I received this [1855] letter.

(Testimony of Arthur Pratt.)

Q. Do you still have that letter?

A. No, I tore that up immediately. It was just a letter saying that they were going to do some remodelling to a certain extent and there had been a certain amount of leakage in the place and they were going to try to get rid of it.

Q. Did you receive any financial statement or operation statement setting forth profits or losses?

A. I have never received at any time, from the first I went in until after I got out, I had never received one.

Q. Did you, during that period of time, call for or inquire about receiving a statement of profit or loss? Just answer that yes or no.

A. Yes. In 1944, right after the first of the year, I requested a statement, but never received it.

Q. And of whom did you make that request?

A. Mr. Remmer.

Q. Did you at any other time, during the period of time that you had invested in this business, other than after the first of 1944, make inquiry of Mr. Remmer, or anybody else, at other times for a financial statement?

Mr. Gillen: Objected to as asked and answered. He said one instance.

Mr. Campbell: I will reframe the question.

Q. Was that the only instance were you asked for a financial [1856] statement?

Mr. Gillen: Objected to as asked and answered.

The Court: Objection overruled.

A. Well, when you phrase it as statement, I

(Testimony of Arthur Pratt.)

didn't exactly have to have a statement in the sense——

Q. Did you inquire as to the progress——

Mr. Gillen: The witness hasn't finished his answer.

Q. Finish your answer.

A. You refer to a statement, that I think you mean it would have to be typewritten. I asked for a statement, that could be oral. I had an investment and I wanted to know how the business was doing and whether there was a profit, so that in my mind was a statement that I requested, but never received it.

Q. On how many occasions did you make a request for a statement?

Mr. Gillen: Objected to as asked and answered.

The Court: Objection overruled.

A. Well, I can't name it in numbers, but after January, 1944, I was telephoning Mr. Remmer and talking to him on the phone quite a number of times and he always came back the place wasn't making any money, but they were stealing money out of there and there just wasn't any money there and he couldn't make a statement.

Q. Did you ever receive money purporting to represent profits in the business? [1857]

A. No.

(Jury and alternate jurors admonished and recess taken at 4:04 p.m.) [1858]

January 9, 1952, 10:00 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. PRATT

resumed the witness stand on further

Direct Examination

By Mr. Campbell:

Q. Now, Mr. Pratt, you testified yesterday concerning your investment of \$3,400 in 110 Eddy Street and concerning the ultimate sale of your interest in March of 1944 for \$6,800, of which you received \$4,800 by way of cashier's check and two thousand dollars credit on money which you had previously received by way of loan, is that correct?

A. Correct.

Q. Now, at the time that you sold your interest in 110 Eddy Street, as evidence by the bill of sale which is here in evidence, who set the price of \$6,800?

A. Well, that was the price that was agreed upon and——

Q. Agreed upon by whom?

A. Mr. Remmer and myself; and I wasn't there to manage there or he wasn't there to manage it and I was so far away from the picture I thought, well, it is better to take that and get out.

Q. Who made the price of \$6,800, or what concern?



(Testimony of Arthur Pratt.)

A. Well, there was no price agreed upon until we arrived at that figure. I was offered that and I took it.

Q. You say you were offered that, by whom were you offered that? [1859]      A. Mr. Remmer.

Mr. Campbell: You may cross-examine.

Cross-Examination

By Mr. Gillen:

Q. Mr. Pratt, at the time the 110 Eddy enterprise was taken over by Mr. Remmer and by yourself, were you acquainted with the fact that Mr. Clarence Bent was indebted to Mr. Remmer?

A. Well, I didn't know how much. I understood through Mr. Bent that he owed Mr. Remmer some money. How much it was, I don't know.

Q. It is a fact, is it not, that Mr. Bent had told Mr. Remmer that he could not pay him and offered Mr. Remmer an interest in 110 Eddy?

Mr. Campbell: Objected as calling for hearsay.  
The Court: Objection sustained.

Q. Well, do you know that Mr. Bent was unable to pay Mr. Remmer and offered him an interest? Do you know that Mr. Bent was unable to pay the money he owed him and offered him an interest in the place in lieu of the money he owed?

Mr. Campbell: Objected to as hearsay.

The Court: Same ruling.

Q. You did, however, know that Mr. Bent did owe some money to Mr. Remmer when you went into the enterprise?

(Testimony of Arthur Pratt.)

A. But how much I don't know.

Q. I am not asking you that. You did know there was some money owed by Bent to [1860] Remmer?

Q. That was in July or August of 1942, I believe you said, is that correct? A. That is right.

Q. Now, at the time you and Mr. Remmer went into the place with Mr. Bent, it is true, is it not, that the place was considerably run down and inadequate? A. Yes, that's right.

Q. And at the time you and Mr. Remmer became interested in the place it was the contemplated plan that the place should be remodelled, modernized, redecorated and re-equipped, isn't that so? A. Yes.

Q. And in keeping with that plan it was understood that your initial \$3,400 investment that you made at the time would not be all of the investment that you would put into the place, isn't that so?

A. Yes, but I was never told how much a one-third was.

Q. All right. Isn't it true that there was first of all the question of determining how much renovating was to be done and how much the renovating would cost, isn't that so? A. Yes.

Q. And you anticipated, did you not, when you put down the \$3400 that you would have to put in additional money depending how extensive the place would be renovated and modernized? A. Yes.

Q. Now, it was also undetermined at the time whether or not that [1861] additional money that

(Testimony of Arthur Pratt.)

you would invest would come out of your pocket or come out of the profit, if the place made a profit?

A. Well, I expected at that time to put more money in than I had.

Q. Out of your pocket?

A. Out of my pocket, but I was never told how much one-third was.

Q. I understand that. I am asking what was the contemplated plan at the time. Now, as a matter of fact, the place was enlarged, was it not?

A. Yes.

Q. In other words, one of the things that was done to enlarge the place was to rent a store or a ground floor loft immediately laterally adjoining the bar, isn't that so? A. Yes.

Q. And also the wall between the bar and that new store, that newly acquired store, was torn out, isn't that so? A. Yes.

Q. And also there was a large circular bar put in, taking in part of the old tavern and part of the new store that was acquired?

A. That's right.

Q. And as a result of that the enterprise incurred additional rent, isn't that so, taking over the new store?

A. It was more than what was originally charged. I don't [1862] know, but I think it was double, I am not positive.

Q. In other words, when you took over an additional equal space in the form of the new store,

(Testimony of Arthur Pratt.)

the rent was practically doubled, if not doubled, isn't that correct?      A. Yes.

Q. Now, also there was, in addition to enlarging the place and in addition to the installation of the circular bar, there was also extensive redecorating the place?

A. Well, it was remodelled from what it used to be into a more or less modern place.

Q. And that included painting and decorating and everything else?      A. Yes.

Q. Now, at the time you invested your \$3400, with the expectation of being called upon to invest even additional money, you were residing at Vallejo at that time?      A. That is right.

Q. Will you tell us, particularly for the benefit of the jurors who reside in other states than California, the distance between Vallejo and San Francisco, approximately?

A. Around 35 or 36 miles.

Q. At the time you invested in the place, it was not your intention to be present there and actually operate the place?      A. No.

Q. You invested in the place because you considered it a good [1863] investment, is that correct?

A. I thought it would be, yes.

Q. Now as I recall your testimony, your initial entry into this organization was in July or August of 1942?      A. That's right.

Q. Now, Mr. Bent died around Easter time, did he not, in 1943?

(Testimony of Arthur Pratt.)

A. Some time in '43. I wouldn't know definitely when it was.

Q. Mr. Cavani testified that Mr. Bent died about Easter time, which would be not earlier than some time in March or later than some time in April. Would that about fix it in your mind?

A. That is about the time.

Q. And then I understood you to have testified yesterday in May of 1943 you moved your place of residence from Vallejo to Portland, Oregon, is that correct?

A. Right.

Q. And of course that removed you farther away from your investment at the 110 Eddy Club, isn't that correct?

A. Yes.

Q. For the benefit of the jury again, can you give us the approximate distance of Portland, Oregon, from San Francisco, California?

A. Around seven hundred miles, I think.

Q. I thought it was closer to 900 miles. It is an overnight trip on the train, is it not?

A. It is overnight. It takes about 18 hours by train, I think. Now it doesn't take that long, but it did in those days. [1864]

Q. Did you ever make an inquiry as to the financial status of the place of Mr. Slater, the man who was keeping the books of the 110 Eddy Club, as to the condition?

A. To my memory I received only one letter from him.

Q. My question is, did you ever personally make an inquiry directly from Mr. Slater?

A. No.

Q. You did say, however, that you did talk on

(Testimony of Arthur Pratt.)

several occasions to Mr. Remmer and asked him what were the conditions and with regard to whether the place was making or losing money or the financial status of the place, is that correct?

A. Yes.

Q. And I understood you to say that your inquiry was not in the form of a demand for a financial statement, but rather merely a casual inquiry as to the conditions?

A. Well, what I tried to find out, if I had anything coming. I wanted to get some money out of it but I didn't make that inquiry until around December or January, latter part of 1943 or early part of '44. Up to that time it was merely hearsay, that other people said the place was doing good, that is, people I met in Portland. Another man would say it is doing no good, so when I did finally get in touch with Mr. Remmer, while I didn't get any figures, I got what I said in my testimony, that he said the place wasn't making any money and that he wasn't there himself and they were stealing him blind. That [1865] is all I ever got in regard to the figures.

Q. In the year 1943 you didn't expect any money because you knew there was a large investment in the matter of modernization, is that correct?

A. Well, it wasn't that. I figured when the time came when I had some money coming, it would be sent to me.

Q. That is not responsive to my question. My

(Testimony of Arthur Pratt.)

question was in 1943 you did expect that they were going to spend money on the property and there wouldn't be any money coming?

A. I won't put in that way. I would put it that the initial investment was probably large enough at the time it was put in, the money it did earn would be enough to pay that investment off.

Q. But you did expect to get more money out of it to cover your investment?

A. Yes, when I first put the money in. Not at the time we are talking about, which was later in '43.

Q. I am talking about what you expected in 1943. You knew there was a great initial investment in 1943 or in 1942 because of this remodelling, isn't that so?      A. Yes.

Q. Now, you say that you never personally inquired of Mr. Slater regarding conditions?

A. No.

Q. Do you recall when you received the letter from Mr. Slater, [1866] the one letter that you received from Mr. Slater, the bookkeeper?

A. I imagine it was after Clarence died and I went to Portland, possibly in the middle of '43.

The Court: When you say "Clarence"?

A. Clarence Bent had died and this was a letter—I had been in Portland possibly three or four months by that time.

Q. You went to Portland in May?

A. That's right.

(Testimony of Arthur Pratt.)

Q. So it might have been September or October that you received the letter?

A. Well, along in August, we will say. I can't say the exact date.

Q. Isn't it a fact that on some of the occasions, however many there may have been, when you talked to Mr. Remmer and inquired as to the financial condition of the place, that Mr. Remmer told you that he was unfamiliar with the exact financial condition of the place, but that you should get in touch with Mr. Slater, the bookkeeper, or he would put Mr. Slater in touch with you, isn't that so?

A. Well, he told me in this way—words that I would substitute—that he wasn't the bookkeeper, he didn't know what it was doing but to write to Slater and Slater would send me some kind of a statement, that he didn't know anything about it and he was too busy doing other things. However, I never wrote and I never [1867] received a statement.

Q. You never wrote to Mr. Slater following Mr. Remmer's suggestion, but you did receive from Mr. Slater a letter giving you some sort of report?

A. Well, the report—

Q. First of all—without having written to Mr. Slater, you did receive from Mr. Slater in the latter part of 1943 a letter giving you some sort of report?

A. Well, I received that one letter.

Q. Obviously, since you did not request anything of Mr. Slater, somebody else must have told Mr. Slater to write to you, isn't that so?

A. No, Mr. Slater wrote to me and I was to



(Testimony of Arthur Pratt.)

sign some paper that was in that letter, accompanied the letter and in the statement, that you regard as a statement, he said that 110 Eddy they had eliminated the amusement because the cost was excessive——

Q. What do you mean by amusement—do you mean entertainment?

A. Entertainment, that was dropped at this particular time, so the letter stated, and that they hoped that after this expense was cut out that the place would start to make money. Now, that is the only statement I ever got out of 110 Eddy.

Q. Mr. Slater also told you in his letter that extensive investment had been made in the remodeling, that it cost considerable money, isn't [1868] that so?

A. This is the remodeling that was done when the place was originally opened. The place was closed three or four months, we paid the rent and Mr. Slater was drawing a salary, before the place was ever remodelled, and all the remodelling to my knowledge, unless it was remodelled after that, was done before the place was opened.

Q. My question is, isn't it a fact that Mr. Slater mentioned in his letter to you that considerable money had been put into the initial investment?

A. That I don't exactly recall, but I know there was considerable money put in other than I put in.

Q. Do you recall just when 110 Eddy Club did open?

A. As to the date, I could not, but I think it was the latter part of October, 1942.

(Testimony of Arthur Pratt.)

Q. You invested in it in July or August?

A. That is when I contracted to go in as a third partner and I put some of the money up at that time and within the next 60 days I put the balance up.

Q. And then in the latter part of 1943, as I recall your testimony, you borrowed back two thousand dollars?

A. From Mr. Kyne.

Q. And one thousand of that you believe you received in person and the other thousand you believe might have been sent to you in Portland, is that correct?

A. I think so. [1869]

Q. So actually then at that time you only had a \$1400 investment?

A. Well, I don't figure it that way. I had actually \$1400 in the company at that time, but my investment hasn't changed because when I borrowed this money, I thought I was borrowing it from Kyne personally and not from the business.

Q. Now, do you recall that you asked Mr. Remmer for money first and Mr. Remmer told you that Willie Kyne would take care of the matter for you?

A. Well, that I don't recall. It could have been possible.

Q. Do you know whether it was Mr. Remmer's money or Mr. Kyne's money that you got?

A. That I couldn't tell.

Q. Do you remember any occasion when you and Mr. Kyne and Mr. Remmer were together and Mr. Remmer said to Mr. Kyne, "If I am not

(Testimony of Arthur Pratt.)

available, anything that Arthur Pratt wants he is to have''?      A. That I wouldn't know.

Q. You say that on one occasion at least, when you talked to Mr. Remmer on the phone and asked him, not for a statement, but regarding the financial condition of the 110 Eddy Club, what it was doing, that he told you that they were stealing or some other such expression?

A. Well, he said that he couldn't be there to watch it and the reason it wasn't making the money that it possibly should have made was because in some manner bartenders or somebody were [1870] helping themselves; in other words, they were taking money that should have been put in the cash register and never got in there.

Q. Did Mr. Remmer tell you, or did it come to your attention, that there had been several changes of bartenders and managers?

A. Well, now that was all beyond my knowledge. My only knowledge would be people that came to Portland from San Francisco that I knew, and the report was——

Q. Well, you didn't get it from Mr. Remmer?

A. No.

Q. When Mr. Remmer told you the place was being robbed and he wasn't there to watch it, is it not a fact that he recited to you an incident of where he went into 110 Eddy establishment one night with several friends and he ordered a drink from a strange bartender and he saw the strange bartender take the money and ring up a no sale on

(Testimony of Arthur Pratt.)

the cash register and put the money in his pocket and he watched the bartender do that in three different instances?

A. I didn't hear that from him but from Mr. Kyne.

Q. Did you hear Mr. Remmer say that he said to the bartender what was the matter with not ringing up the money and the bartender said, "Who do you think you are?" and he said, "I am only one of the owners; take your apron off and get out." Isn't that so?

Mr. Campbell: I move that be stricken and the previous [1871] question and answer be stricken.

The Court: The objection will be sustained to this question and the previous answer will stand. I didn't hear an objection to it.

Mr. Campbell: I didn't have a chance.

The Court: Then the answer will go out. Objection sustained.

Q. Did Mr. Remmer ever give you details as to how the place was being imposed upon by the help?

A. Well, the only conversation I can really recall by Mr. Remmer and myself was when I was trying to sell out and we must have talked for half an hour on the telephone and the only thing I could gather that was concrete that as far as the place was concerned, the place hadn't made any money, due to the fact that it was mismanaged and that funds that should have been received were being stolen.

Q. Did he tell you anything about the bartender incident I have just related?

Testimony of Arthur Pratt.)

A. To my knowledge no, but I did, as I stated, hear that from Mr. Kyne since I have been here.

The Court: The latter part will go out.

Q. Did Mr. Remmer say to you in that conversation, or any other conversation, that he witnessed a bartender stealing money right before his eyes?

A. No. [1872]

Q. Now, do you know, Mr. Pratt, how much money was invested in the 110 Eddy Club?

A. I have no knowledge at all, only as to my own investment.

Q. Now, Mr. Pratt, I am going to show you prosecution's Exhibit 86, the 1943 partnership return of the 110 Eddy Club, and with particular reference to the distributive share of the profits. I will ask you to look at the whole document first and ask you if you ever saw that before?

A. I think Johnnie Taffe sent me a copy or Mr. Maundrell sent me a copy of this, after I completed the sale of 110 Eddy.

Q. That shows, does it not, a credit to your account of \$3425 from the profits, is that correct?

A. Well, that was what I received in the profit for this sale.

Q. I am asking you if that isn't what the document shows?

Mr. Campbell: Objected to — the document speaks for itself.

The Court: I don't see much difference whether the attorney or the witness reads the document which is in evidence.

(Testimony of Arthur Pratt.)

A. Well, I received three thousand——

Q. I am asking you what the document shows?

A. Well, now in what respect?

Q. Right here, \$3425.24, is that correct?

A. Yes.

Q. Now, you initially, and your only investment in actual cash [1873] out of your pocket was \$3400, is that correct?      A. That is right.

Q. And you received, and agreed to accept, for your interest just twice the amount you invested; in other words, \$6800?      A. That is right.

Q. Now, I understood your testimony to be this morning that, having moved to Portland, being unable to be close enough to keep an eye on the investment or in any way look after its management, that you determined that you would rather be out, is that correct?      A. That's right.

Mr. Gillen: I think that is all.

Mr. Campbell: That is all.

(Witness excused.)

Mr. Campbell: If the Court please, I wonder if I could be heard at this time on the matter of admissibility of that exhibit?

The Court: Yes.

(Jury and alternate jurors admonished and excused at 10:30.)

(In the Absence of the Jury.)

(NB 333—P. 3-19.)

11:35 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.) [1874]

WILLIAM E. KYNE

having been previously sworn, was recalled on behalf of the plaintiff and testified as follows:

Direct Examination

By Mr. Campbell:

Mr. Campbell: The record will show, I believe, that Mr. Kyne was on the stand yesterday under direct examination, at which time the government offered in evidence plaintiff's Exhibit 153 for identification and further proceedings were suspended at that time in view of the contemplated argument by counsel on the admissibility of the document and was deferred until this morning, in order that we could put another witness on the stand. At this time I wish to renew the offer into evidence of government's Exhibit 153 for identification, on all the grounds heretofore stated.

Mr. Gillen: At this time, may it please the Court, we object upon all the grounds stated in the absence of the jury in the argument to your Honor, and we ask at this time that we be permitted to examine Mr. Kyne on his voir dire in relation to that, which will assist your Honor in making your ruling.

The Court: You May.

Q. (By Mr. Gillen): Mr. Kyne, when Mr.

(Testimony of William E. Kyne.)

Campbell asked you yesterday this question: "Mr. Kyne, with relation to the 110 Eddy Street as of the month of November, 1945, will you state what the interests were in that concern," let me ask you whether or not you understood Mr. Campbell to mean what were the percentage of each partner, or what were the interests that had been built [1875] up in dollars and cents by each partner on the books of the enterprise?

Mr. Campbell: Objected to as not proper voir dire, and is not the question to which this document related.

The Court: Objection sustained.

Q. Well, when Mr. Campbell asked you this question, "Mr. Kyne, with relation to the 110 Eddy Street as of the month of November, 1945, will you state what the interests were in that concern," what did you understand his question to mean?

Mr. Campbell: That is objected to as improper voir dire and not the question to which this document was offered in evidence.

The Court: Objection sustained.

Q. Let me ask you this, Mr. Kyne, what did you mean when you told Mr. Campbell that in November of 1945 the interests in the 110 Eddy concern were best reflected in the books, that the books would tell, what did you mean by that?

Mr. Campbell: Objected to as not proper voir dire, not the matter to which this exhibit is directed. Further, the record speaks for itself.

The Court: Objection sustained.



(Testimony of William E. Kyne.)

Mr. Gillen: I thought, your Honor, the purpose of voir dire of this witness at this time was to determine what the witness was answering.

The Court: I think it was; that is why I sustain the [1876] objection.

Q. Let me ask you this—in November of 1945, Mr. Kyne, did you know what percentage each partner had in 110 Eddy Street?

Mr. Campbell: Objected to as not proper voir dire.

The Court: Objection sustained.

Q. In November of 1945 did you know what amount of interest each partner had credited to him on the books?

Mr. Campbell: Objected to as not proper voir dire.

The Court: Objection sustained.

Q. So you know now what was your interest in 110 Eddy Street, that is, what percentage of the partnership of 110 Eddy Street you had?

Mr. Campbell: Objected to as not proper voir dire. It is a matter for cross-examination and not the question to which this document was offered.

The Court: Objection sustained.

Mr. Gillen: Of course, the question is plain here. He said, "Will you state what your interests were in that concern as of November, 1945."

The Court: That is not the question before the Court.

Mr. Gillen: Then I am uninformed.

The Court: The ruling will stand.

(Testimony of William E. Kyne.)

Mr. Gillen: Will your Honor call my attention to what is the question?

The Court: If I can look at the transcript again I can [1877] point it out to you.

Mr. Gillen: Yes, sir. If your Honor will enlighten me as to what you have in mind.

The Court: The question is: "Now as of that date, as of November, 1945, who owned the business?"

Mr. Gillen: I don't think that question can be read separately. I think the three questions should be read.

The Court: That is my view of it.

Q. In November, 1945, did you know who owned the business, Mr. Kyne, as to percentage, and did you know who owned the business as to interests built up on the books?

Mr. Campbell: Objected to as not proper voir dire.

The Court: Objection sustained.

Q. Well, what did you think Mr. Campbell meant when he asked you as of November, 1945, who owned the business?

Mr. Campbell: Objected to as not proper voir dire; incompetent.

The Court: Objection sustained.

Mr. Gillen: Well, your Honor pointed out to me the question that we were concerned with was who owned the business. Now I am asking this gentleman if he knows what Mr. Campbell meant when he asked that, because there are two types of

(Testimony of William E. Kyne.)

interest here, a one-fourth partnership interest and interest that built up the equity in the business, and that is what is a little confusing on this. [1878]

The Court: The ruling will stand.

Q. Mr. Kyne, what did you mean by your answer that the books would reflect the situation as it stood in November of 1945?

Mr. Campbell: The Court has already ruled on this question. It is not proper voir dire.

Mr. Gillen: I don't think I ever asked that question before.

The Court: Objection will be sustained.

Q. What did you think was being asked of you, Mr. Kyne, in that question that was put by counsel yesterday, who owned the business of 110 Eddy Street in November of 1945?

Mr. Campbell: That is objected to, not proper voir dire.

The Court: Objection sustained.

Q. I show you prosecution's Exhibit 153 for identification and I will ask you first—you did not make that yourself, did you?

A. What is the last question?

Q. First of all, you did not make that yourself, did you?

Mr. Campbell: Objected to. The witness has identified the signature and that is his affidavit.

The Court: You may answer the question.

A. A government man made this document.

Q. A government from the Alcohol Tax Unit, isn't that correct?

(Testimony of William E. Kyne.)

A. I thought it was an FBI man, I am not sure.

Q. You had been in the army at that time how long, from February 1945 to November? [1879]

A. To November.

Q. And you had not been back to San Francisco and looking at the books or keeping the books of 110 Eddy, is that correct?

Mr. Campbell: Objected to as immaterial.

The Court: Objection sustained.

Q. Who did own the 110 Eddy Club in November of 1945, and you may explain, I believe, with the permission of the Court, anything that you may have to explain in connection with the partnership.

Mr. Campbell: Objected to as not proper voir dire.

Mr. Gillen: Certainly a witness can explain.

Mr. Campbell: The question has been asked and answered and it is not proper voir dire.

The Court: Objection sustained.

Mr. Gillen: I am asking the exact question that counsel asked, who did own the 110 Eddy Street, if you know, in November, 1945? I am asking the exact question.

The Court: We have his answer to that question here in the record. Objection sustained.

Q. What did you mean in the account which you gave in this affidavit, which is prosecution's 153 for identification? Were you talking about the ownership of the physical assets of the partnership or were you talking about the interests that had been

(Testimony of William E. Kyne.)

built up by way of sharing of the profits by the partners? [1880]

Mr. Campbell: Objected to as not proper voir dire and a matter of cross-examination, and I further suggest to the Court that if my objection to this question is sustained that further voir dire should be foreclosed.

The Court: Objection sustained.

Mr. Gillen: Now, your Honor, voir dire is cross-examination to enlighten counsel——

The Court: Well, there is nothing before the Court now. The Court has sustained the objection.

Mr. Gillen: Will the reporter read what the Court said was the proper question?

(Record read.)

Mr. Gillen: Now I will put that question.

Q. Now as of November, 1945, who was the owner of that business, 110 Eddy Street?

Mr. Campbell: To which I object as not proper voir dire. The matter has been asked and answered. My understanding voir dire is only as to test the admissibility of the document.

The Court: Objection sustained.

Mr. Gillen: Of course, we are testing the admissibility.

The Court: The Court has ruled twice on that very question.

Mr. Gillen: But I understood that your Honor read from the transcript and said that the question that you were interested in—— [1881]

(Testimony of William E. Kyne.)

The Court (Interceding): That was because you were going off on questions that had no relation. The ruling will stand.

Mr. Gillen: May I ask what question your Honor is interested in, because I want to put the proper question.

The Court: You asked to have this witness called for the purpose of voir dire and you may proceed.

Mr. Gillen: Your Honor indicated to me there was one question you were interested in.

The Court: Yes, because you were going off to questions that had no relation; to stop it.

Mr. Gillen: There must be some question your Honor is interested and if you will enlighten me, I will not waste time.

The Court: I am not on cross-examination.

Mr. Gillen: I am asking your Honor's assistance to enlighten me what your Honor feels would assist you in making the correct ruling in this matter on this exhibit and I will address myself only to that subject and nothing else.

The Court: You may proceed.

Mr. Gillen: May I ask respectfully if there is some suggestion on the point of voir dire?

The Court: I have no suggestions to make.

Q. Mr. Kyne, was there ever a time, from the inception of acquiring of the 110 Club that you had any doubt as to the percentages that each partner had acquired? [1882]

Mr. Campbell: Objected to as not proper voir dire.

(Testimony of William E. Kyne.)

The Court: Objection sustained.

Mr. Gillen: Do I understand now, your Honor, that the purpose of attempting to introduce this affidavit is to refresh the memory of Mr. Kyne on something he said that he did not yesterday recollect? I am now asking him if there was any time that he did not recollect what percentage each partner owned in the 110 Eddy.

The Court: The purpose of introducing the affidavit was gone into on the argument we had in the absence of the jury.

Mr. Gillen: That is true and that is why we ask your Honor to let us examine this man on voir dire, because your Honor asked some questions that indicated to you that there could have been two interpretations.

The Court: I think your voir dire should be confined to this document, 153 for identification.

Mr. Gillen: I asked a question concerning that—let me see if I can get around it without violating the Court's order.

Q. When you signed the affidavit for the government man in November, 1945, and related what you related in that affidavit, Mr. Kyne, were you referring to the percentage of each partner, were you stating percentages, or were you stating interests that had been built up in dollars and cents on the books of the company? [1883]

Mr. Campbell: Objected to as not proper voir dire. The document itself is the best evidence of

(Testimony of William E. Kyne.)

its contents, which is not yet in evidence. It is offered.

Mr. Gillen: Your Honor told me to address myself to the document concerned. I am asking him what he was answering in that document.

The Court: Objection sustained.

Q. What did you mean by that document?

Mr. Campbell: Objected to as not proper voir dire.

The Court: Objection sustained.

We will take a recess at this time.

(Jury and alternate jurors admonished and recess taken at 11:50 a.m.)

January 9, 1952—1:00 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

**MR. KYNE**

resumes the witness stand on further

Voir Dire Examination

By Mr. Gillen:

Q. Mr. Kyne, with the Court's permission, I am going to hand you prosecution's Exhibit 153 for identification, and I will ask you to read it over, if you haven't read it or don't recall from your reading if it yesterday, and when you have done so, I am going to ask you a question.



(Testimony of William E. Kyne.)

A. I understand the document. [1884]

Q. My question is, do you have a recollection at the present time as to matters mentioned in that document, prosecution's 153 for identification?

Mr. Campbell: Objected to as asked and answered.

The Court: Well, he may answer the question.

A. Yes, sir.

Mr. Gillen: Then I submit, your Honor, in view of the fact that the witness has stated that he has a present recollection of the matters contained in this proposed exhibit, then there is no foundation laid for the admission of that exhibit, for the reason that the exhibit was only offered to him for the purpose of refreshing his recollection concerning a matter. I submit it.

The Court: He stated yesterday that he had a recollection of that instrument and that the statement in it was true as I understood it.

Mr. Campbell: That is correct.

Mr. Gillen: That it was true at the time he made it, it was the truth to the best of his recollection.

The Court: But that does not meet the situation we are confronted with here. His answer to that question is another consideration.

Mr. Gillen: He has a present recollection of it and lack of present recollection——

The Court (Interceding): He stated he had no recollection [1885] at this time in answer to this question we are dealing with. That answer was not given in relation to the document, it was given in

(Testimony of William E. Kyne.)

relation to the question. He didn't know who the owners of the 186 Club were in November, 1945.

Mr. Gillen: But, your Honor, he states, having read this document, he states he has a present recollection of this document.

The Court: Yes, he has a present recollection of the contents of the document and that is what he stated yesterday. He said the document was the truth, but he won't answer this question except by saying he has no recollection as to who the owners of that club happened to be in November, 1945, and that is the matter under consideration.

Mr. Gillen: That is what I endeavored to elicit from him this morning.

The Court: Well, the exhibit will be admitted in evidence, No. 153.

Mr. Gillen: May we be heard further outside the hearing of the jury?

The Court: No, I don't think anything will be gained by any further argument on that.

Mr. Campbell: At this time I wish to read plaintiff's Exhibit 153.

(Reads.) [1886]

Mr. Gillen: May it be stipulated that A. T. U. means Alcohol Tax Unit.

Mr. Campbell: Yes. You may cross-examine.

#### Cross-Examination

By Mr. Gillen:

Q. Now, Mr. Kyne, is it not a fact that the set-

(Testimony of William E. Kyne.)

up, insofar as 110 Eddy Street was concerned, was the same as the set-up of every business in which you and Mr. Remmer had an interest in San Francisco; namely, that whatever Mr. Remmer had an interest in, you had an interest or percentage?

A. Working interest, yes, sir.

Q. Now isn't it a fact that in the case of 110 Eddy Street, as in the case of the enterprises that have been probed into here, including the Menlo Club, which interests were reduced to writing, that certain of the partners had a working interest in the profits of the organization, which meant when they met their pro rata of the initial investment would result in their having a partnership in the actual physical assets?

Mr. Campbell: Objected to as calling for his conclusion.

The Court: He may answer the question.

A. That is correct.

Q. And when you made this affidavit for this alcohol tax unit agent, while you were a soldier in North Carolina, to what did you refer with regard to the set-up of the business in San Francisco?

Mr. Campbell: Objected to as incompetent, if the Court [1887] please.

The Court: You may answer the question.

A. It refers to Mr. Remmer's money being drawn out before the partner's share in it.

Q. In other words, that Mr. Remmer's investment would have to be——

A. Returned.

(Testimony of William E. Kyne.)

Q. Returned or at least equalled before the partners would have actual physical ownership of the assets? A. That is correct.

Mr. Campbell: Just a moment—all right.

Mr. Gillen: Does counsel make an objection?

Mr. Campbell: Well, I was going to object and move to strike the answer, on the ground that the question, which is in the alternative, suggests a fact not in evidence.

The Court: The answer may stand. You may proceed.

Mr. Gillen: Of course, I challenge the statement, it suggests a fact not in evidence.

The Court: The answer stands.

Mr. Gillen: I move counsel's remark——

The Court: The motion is denied and there is nothing before the Court.

Q. Now did you at all times know what percentage of interest each partner had in the 110 Eddy Street? A. Yes, sir. [1888]

Q. And from the time that Cavani and Turner came in there, what was the percentage of interest that each partner had in the business?

A. One-fourth.

Q. And that is what you stated on your direct examination here December 17th, isn't that so?

A. Yes, sir.

Q. Now with regard to what amount in dollars and cents, or what amount in the club each partner had built up in the business as of November, 1945,

(Testimony of William E. Kyne.)

were you aware of those facts, without consulting the office to see what the books show?

A. Without seeing the books, I wouldn't know.

Q. You didn't even know what equity you had built up yourself as of November, 1945, without seeing the books, did you? A. That is correct.

Q. In November, 1945, you had been away from that business for nine months, serving in the army, had you not? A. Yes, sir.

Q. And you were not acquainted at that time with what the books showed to be your interest in dollars and cents? A. That is correct.

Q. You did know that you had a one-fourth interest in the over-all business, did you not?

A. Yes, sir.

Q. When Mr. Campbell asked you yesterday—I am reading from [1889] page 1836 of the transcript in this case—when Mr. Campbell asked you:

“Q. Mr. Kyne, with relation to the 110 Eddy Street, as of the month of November, 1945, will you state what the interests were in that concern?

“A. Well, the money put into the place was supposed to be met with and then we would be partners.”

What did you mean by that, Mr. Kyne?

Mr. Campbell: That is objected to as incompetent, if the Court please. I think he can state what the facts are, but the question calls for conclusions, opinion of the witness. I think it incompetent for that reason.

(Testimony of William E. Kyne.)

The Court: Objection overruled. You may answer the question.

A. That Mr. Remmer's money should be returned before the partners participated in the profits or the ownership.

Mr. Campbell: I ask that be stricken as not responsive to the question.

The Court: It will stand.

Q. Now when Mr. Campbell asked you:

"Now as of that date, as of the month of November, 1945, who owned the business,"

and you said: "The books would show that," what did you mean by that?

A. The books would show how much each partner had. [1890]

Q. How much each partner had to his credit on the books? A. That's right.

Q. And you were uninformed as of November, 1945, as you were uninformed yesterday, as to what the books showed your interest to be built up in dollars and cents as of November, 1945?

A. I didn't see the books for nine months.

Q. Now, Mr. Kyne, do you remember when this Alcohol Tax Unit man interviewed you? I assume he interviewed you first and then went away and prepared the affidavit and brought it back for you to sign, is that what happened? A. Yes, sir.

Q. When that agent interviewed you at Fayetteville, North Carolina, at the army encampment, did you relate to him the intricacies and details of how these partnerships were set up? A. Yes.

(Testimony of William E. Kyne.)

Mr. Campbell: Objected to as immaterial.

The Court: Objection sustained.

Mr. Gillen: I have in mind whether or not all the facts were related to this man, preliminary to asking him another question.

Mr. Campbell: It is immaterial.

The Court: The ruling will stand.

Q. Well, who drew up the affidavit?

A. The agent. I thought he was representing the FBI.

Q. At least he went away with the data you gave him and came [1891] back with this affidavit is that correct?

A. He wanted to know the set-up and I explained it to him.

Q. And when he brought back this affidavit, you signed it? A. Yes, sir.

Q. Did this affidavit contain everything you told this Alcohol Tax man about the partnership setup?

Mr. Campbell: Objected to as incompetent and immaterial.

The Court: Answer the question.

A. Well, we had quite a few conversations relative to the place of business.

Q. More than one conversation? A. Yes.

Q. Does this affidavit contain all of the details of the set-up of the partnership as you related them to him? A. No, sir.

Q. What is missing from that affidavit, as compared with what you told him about the set-up of the partners?

(Testimony of William E. Kyne.)

Mr. Campbell: Objected to as incompetent and immaterial.

The Court: You may answer the question.

A. I explained to him the working interest of different partners as explained here.

Q. As you have explained here today and on the occasion of your prior appearance on the witness stand in giving testimony?

A. That's right.

Q. And the affidavit was presented to you in the form that it [1892] is and you signed it in that form?

A. Yes, sir.

Mr. Gillen: Now as a practical matter, and in the interest of not unduly delaying, your Honor will recall, and I invite your Honor's attention to page 1136 of the transcript, we asked permission of your Honor to recall Mr. Kyne at some future time for further cross-examination on this direct examination if necessary.

The Court: In relation to this exhibit?

Mr. Gillen: No, in relation to his general direct examination. I think both sides reserved the right to recall the witness.

Mr. Campbell: That was a closed subject, but there was one matter I think came up at one time and counsel stated he would like to cross-examine.

The Court: If counsel is not ready to have Mr. Kyne excused——

Mr. Gillen: I will read it to your Honor. The Court said, page 1136, line 21: (Reads from Transcript. I ask if we may still reserve that right?



(Testimony of William E. Kyne.)

The Court: For further cross-examination?

Mr. Gillen: Yes.

The Court: You may recall him if you want to.

Mr. Gillen: Thank you. [1893]

Redirect Examination

By Mr. Campbell:

Q. Mr. Kyne, at the time you signed this affidavit, did you read it? A. Yes, sir.

Q. Did you make any corrections on it?

A. No, sir.

Q. Were you given that opportunity?

A. Yes, sir.

Q. Mr. Kyne, when it says here that Frank Cavanani and Chub Turner did not own any business in the club except working interest, that affidavit spoke the truth, did it? A. That is correct.

Q. Is that the type of interest which you owned in the business at that time?

A. I explained that Mr. Remmer's money had to be received back before the rest of the partners participated in the revenue of the place.

Q. Before they received any of the revenue?

A. That is correct.

Q. And that applied to you as well as to the other individuals? A. Yes, sir.

Q. And that is true as to each of the various businesses? A. Yes, sir.

Q. Do you know whether or not Mr. Remmer

(Testimony of William E. Kyne.)

received all his money back out of any of these businesses? [1894]

Mr. Gillen: Thit is improper redirect. That has been gone into fully.

The Court: I think so. Objection sustained.

Mr. Campbell: Very well. I think that is all at this time.

### Recross-Examination

By Mr. Gillen:

Q. Mr. Kyne, you say before participating in the revenue—as a matter of fact every partner was participating in the profits to the extent of having their interest set up on the books, is that correct?

A. That is correct.

Q. In other words, the profits that were derived from the business were left in by the working partners, instead of being drawn down, to offset the investment that had been made by Mr. Remmer, is that correct?

A. That is correct.

Q. And that was the situation with all of these things?

A. Yes, sir.

Q. Now you stood in a different position with Mr. Remmer than the other people, did you not, in that you had interest in the physical assets of everything Mr. Remmer owned in San Francisco?

A. I had a working interest, yes.

Q. Well, you were to derive from the sale of any business some portion of the proceeds that were derived from the sale of the business, isn't that correct? [1895]

A. Correct.

(Testimony of William E. Kyne.)

Mr. Gillen: I think that is all.

Redirect Examination

By Mr. Campbell:

Q. Isn't it a fact that Mr. Remmer——

Mr. Gillen (Interrupting): Is counsel going to cross-examine his own witness? This is leading and suggestive.

The Court: I have not heard the question. Let me have the question.

Mr. Campbell: I only had four words out.

Mr. Gillen: Your Honor recognizes a leading question when——

The Court (Interceding): Let me hear the question.

(Question read.)

Mr. Gillen: It is leading.

The Court: There are times when the Court permits leading questions. I do not know until I hear the question.

Mr. Campbell: I will reframe the question.

Q. Mr. Kyne, in response to Mr. Gillen's question as to whether or not you, as distinguished from other individuals, had an interest in the assets, you stated that you had a working interest. What do you mean by that answer?

A. The working interest applied to the fact that when Mr. Remmer received his initial money back we would all participate in the profits. [1896]

(Testimony of William E. Kyne.)

Q. And was that participation to be only after he had received his money back?

Mr. Gillen: Just a moment. I submit that has been explained many times. In fact, the prosecution offered books in evidence which contained credits to the various partners who had built up out of the profits and drawn down and paid income tax out of the profits that were——

The Court: In view of the recent examination, I will permit the question.

(Question read.)

A. I believe I answered that question.

Q. Will you answer it again?

(Question read.)

A. That is correct.

Q. That was true as to each of the enterprises, as I understand it—none of the partners of those having a working interest were to draw any of the profits until that had been accomplished, is that correct?

A. That is right.

Mr. Campbell: I think that is all.

#### Recross-Examination

By Mr. Gillen:

Q. In other words, when you say they could not draw, you mean by that they could not take the profits out and put it in their pocket; they had to be left in the business to build up their equal responsibility in the investment? [1897]

(Testimony of William E. Kyne.)

A. That is right.

Q. Then after they had equalled the investment of Mr. Remmer, then they could put it in their pocket? A. Yes.

Q. But in the intervening time they were charged with those credits and they were allowed to draw enough money to pay their taxes?

A. That is right.

Mr. Gillen: That is all.

The Court: Mr. Kyne, you may be excused subject to call.

CHARLES M. MINER,

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination

By Mr. Campbell:

Q. What is your name?

A. Charles M. Miner.

Q. Where do you reside, Mr. Miner?

A. In San Francisco, California.

Q. What is your business or occupation?

A. I am special agent for the Bureau of Internal Revenue.

Q. How long have you been a special agent?

A. Two and one-half years.

Q. Are you also an accountant, Mr. Miner?

A. Yes, sir, I am.

Q. Now in connection with your duties as a special agent of the Bureau of Internal Revenue,

(Testimony of Charles M. Miner.)

you were asked to and did make [1898] certain examinations relative to an account in the Crocker First National Bank of San Francisco under the title of Elmer Remmer and Harold Maundrell?

A. I did.

Q. In connection with that examination, did you examine the ledger sheets of that account as maintained by the bank? A. I did.

Q. I will show you plaintiff's Exhibit 27, consisting of the signature cards and ledger sheets, photostatic copies of ledger sheets, transcript of that account, and ask you if you recognize those as being photostatic copies of the bank account that you examined? A. Yes, this is the account.

Q. Now I will ask you whether or not you examined that account for the purpose of ascertaining year-end balances in that account as adjudged by outstanding checks which had not yet been presented to the bank for payment at the end of the year?

Mr. Gillen: Just a moment.

Mr. Campbell: May I finish?

Mr. Gillen: I think it is leading and suggestive. I think he could ask what he examined the account for and the witness could relate what he examined it for.

Mr. Campbell: It is preliminary.

Mr. Gillen: Preliminary questions shouldn't contain all [1899] the matter—

The Court: See if you can avoid leading questions.

(Testimony of Charles M. Miner.)

Mr. Gillen: A simple question would be, what you examined the account for.

Q. Will you state the purpose of the examination which you made of this account?

A. To determine the balances in the bank as at the end of the year 1945 and 1946 as they related to the owners' interest therein, and adjusted by outstanding checks and deposits in transit.

Q. Now will you state what you mean by deposits in transit?

A. Deposits in transit are deposits that have been reflected on the books as additions to the bank account, that is, on the books of the depositor, but which deposits have not yet been credited by the bank.

Q. Into the bank account?

A. Into the bank account.

Q. Now in connection with that examination which you made of this account, what other records and documents did you have before you?

A. I had in addition to the bank statements cancelled checks drawn against the account and I had some stubs.

Q. Check stubs?            A. Check stubs.

Q. Now in that connection there has been brought into court [1900] a paper box container, containing envelopes of cancelled checks and check stubs—

Mr. Golden: Pardon me—we want to be clear on what this is. Is this carton one of the cartons that we delivered to the clerk last month?

(Testimony of Charles M. Miner.)

Mr. Campbell: I am just going to identify them.

Mr. Golden: We want to know that first. We want to make objection to it.

Mr. Campbell: I will ask to have an identification number given to this box containing——

Mr. Gillen: All we want to know is that one of the boxes brought in on the Court's order?

Mr. Campbell: No. A box containing a number of envelopes containing cancelled checks and what appears to be check stub books.

The Clerk: No. 161 for identification.

Mr. Gillen: Your Honor understands the reason we interrupted because we wanted to know if we would be required to make that general objection.

The Court: I think Mr. Campbell understands. They were not produced pursuant to court order?

Mr. Campbell: No.

The Court: I think that is clear now.

Q. Now were the contents of that box available to you and used by you during the course of your examination? [1901]

A. Yes, sir, the contents were available.

Q. Now in addition there have heretofore been received in evidence in this case, as government's Exhibits 132 to 136, inclusive, certain check stubs of the Crocker First National Bank, and were these also available to you and used by you, if necessary, in the course of the examination which you made for the purposes which you have outlined?

A. Yes, sir, these were available to me and examined by me.



(Testimony of Charles M. Miner.)

Q. Now I first call your attention to the fact, referring to plaintiff's Exhibit 27, transcript of this account, shows that the account was opened on or about June 21, 1945, and the balance as shown at December 31, 1945, the sum of \$5492.69. Did you observe that, Mr. Miner?      A. Yes, I did.

Q. Now based upon your examination of the records which you have referred to, will you state—will you answer this yes or no—if you found that certain checks had been drawn against that account but which had not yet been presented to the date prior to the end of December 31, 1945, but which had not been cleared through the records of the bank as of the close of business December 31, 1945?

Mr. Avakian: Just a moment. This question, even though it calls for yes or no, is obviously getting facts in evidence based on records not in evidence. We object to the question because it calls for matter which is not in evidence, and also [1902] I believe—counsel can correct me if I am wrong—I believe the material the witness referred to in making this examination appears to be books and records of the defendant, taken during the course of the investigation, with agreement to return, never returned and never shown prior to this moment, although we requested them, and we object on all these grounds made to the use of any of that in evidence, and in addition object to the use of any evidence which is not before the court, not the best evidence.

The Court: Objection overruled. Answer the question.

(Testimony of Charles M. Miner.)

A. Yes, sir, I found such checks.

Q. Now in connection with those checks which you have referred to, have you drawn up and do you have in your possession a listing of those checks, giving the dates, the check numbers and the amounts of such checks?

Mr. Avakian: Your Honor, may it be understood our objection goes to the entire line of examination?

The Court: No, we will have to hear objection to each question.

Mr. Avakian: Then unless your Honor wishes me to repeat it, I will state same objection, if that will suffice.

The Court: Same ruling.

A. Yes, sir, I do have a list of such checks by check number, amount and date.

Q. And in relation to December 31, 1945, based upon the examination [1903] of the records to which you refer, did you ascertain whether or not any deposits were in transit as of that date, which had not yet been credited to the account of the bank?

Mr. Avakian: Objected to for the same reasons and the additional ground the records themselves would be the best evidence.

The Court: Objection will be overruled.

Q. Answer yes or no.

A. Yes, sir, there was a deposit made—

Mr. Gillen: He asked for a yes or no answer—he got his answer.

(Testimony of Charles M. Miner.)

Q. Now did you also draw up a schedule setting forth the same information and from the same sources with relation to the date of December 31, 1946? A. I did.

Q. Now will you produce those schedules? You have handed me two sets of schedules. The first of these refers to the year-end December 31, 1945, is that correct? A. That is correct.

Q. And the other the year-end December 31, 1946? A. That is correct.

Mr. Campbell: I ask that these be marked plaintiff's Exhibit 162 for identification and 162A for identification, that relating to December 31, 1945, bearing the first of the two numbers. [1904]

Mr. Gillen: If counsel happens to have copies, it will save considerable time.

Mr. Campbell: I do not, I regret to say.

Mr. Gillen: These were prepared in March, 1951. They could get photostats much quicker than that.

Mr. Campbell: I do not have copies of them.

The Court: Ladies and gentlemen of the jury, we will take a recess while counsel are examining these documents.

(Jury and alternate jurors admonished and recess taken at 1:50 p.m.)